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Vol. IV

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 666

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 667

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 668

LUMBER PRODUCTS ASSOCIATION, INC., ACME MANUFACTURING CO., INC., EUREKA SASH, DOOR & MOULDING MILLS, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 674

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 675

BOORMAN LUMBER COMPANY, HOGAN LUMBER COMPANY, LOOP LUMBER & MILL COMPANY, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED { NOVEMBER 11, 1944.
NOVEMBER 13, 1944.

No. 10011

United States
Circuit Court of Appeals
For the Ninth Circuit.

LUMBER PRODUCTS ASSOCIATION, INC., a corporation, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record
In Four Volumes
VOLUME IV
Pages 1407 to 1669

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

ROTARY COLORPRINT, 590 FOLSOM ST., SAN FRANCISCO

[Title of Court and Cause.]

NOTICE OF APPEAL OF APPELLANTS LUMBER PRODUCTS ASSOCIATION, et al.

Names and Addresses of Appellants

Lumber Products Association, Inc., a corporation,
3196 24th Street,
San Francisco, California.

Acme Manufacturing Co., Inc., a corporation,
345 Bayshore Boulevard.
San Francisco, California.

Eureka Sash, Door & Moulding Mills, a corporation,
1715 Mission Street,
San Francisco, California.

Carl Warden,
2348 Funston Avenue,
San Francisco, California.

Harry W. Gaetjen,
3196 24th Street,
San Francisco, California.

Charles Monson,
345 Bayshore Boulevard,
San Francisco, California.

Fred Spencer,
1715 Mission Street,
San Francisco, California.

Names and Addresses of Appellants (Cont.)

W. P. Holmes,
6th and Channel Streets,
San Francisco, California.

Charles Gustafson,
560 Brannan Street,
San Francisco, California.

Christian A. Wilder,
96 Ravenwood Drive,
San Francisco, California.

J. A. Hart,
Jerrold and Napoleon Streets,
San Francisco, California.

Names and Addresses of Appellants' Attorneys

James M. Thomas,
703 Market Street,
San Francisco, California.

Maurice E. Harrison,
Moses Lasky,
Brobeck, Phleger & Harrison,
111 Sutter Street,
San Francisco, California.

Offense:

Violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act. [1084-A]

Date of Judgment:
December 20, 1941.

Brief Description of Judgment on Sentence:
Lumber Products Association, Inc., Acme Manufacturing Co., Inc., Eureka Sash, Door & Moulding Mills, each fined $2,000. Carl Warden, Harry W. Gaetjen, Charles Monson, Fred Spencer, W. P. Holmes, Charles Gustafson, Christian A. Wilder and J. A. Hart each fined $1,000.

Each of us, the above named appellants, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned, respectively rendered against him or it, on the grounds set forth below.

/s/ LUMBER PRODUCTS ASSOCIATION INC.
(Seal) (Lumber Products Association, Inc.)
/s/ By Chas. Monson
President
/s/ By Harry W. Gaetjen
Secretary

/s/ ACME MANUFACTURING CO., INC.
(Seal) (Acme Manufacturing Co., Inc.)
/s/ By Chas. Monson
President
/s/ By Doris Monson
Secretary

/s/ EUREKA SASH, DOOR &
MOULDING MILLS
(Seal) (Eureka Sash, Door & Moulding
Mills)
/s/ By Fred S. Spencer
Vice President
/s/ By Fred S. Spencer
Secretary

/s/ CARL A. WARDEN

/s/ HARRY W. GAETJEN

/s/ CHARLES MONSON

/s/ FRED S. SPENCER

/s/ W. P. HOLMES

/s/ CHAS. GUSTAFSON

/s/ CHRISTIAN A. WILDER

/s/ J. A. HART [1084-B]

Dated: December 24, 1941.

Grounds of Appeal

The court erred in overruling the demurrers of appellants to the indictment and to the first count thereof.

The court erred in denying the motions of defendants Warden Brothers, Brannan Street Planing Mill, and Sage & Wilder to quash the indictment and the first count thereof.

The court erred in denying the motions of

Charles Gustafson and Christian A. Wilder to quash bench warrants, vacate order for issuance thereof, and to discharge bail.

/s/ JAMES M. THOMAS
/s/ MAURICE E. HARRISON
/s/ MOSES LASKY
/s/ BROBECK, PHLEGER & HARRISON
Attorneys for Appellants

[Endorsed]: Filed, Dec. 24, 1941. [1084-C]

[Title of District Court and Cause.]

NOTICE OF APPEAL OF APPELLANT ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL.

The name of the appellant herein is Alameda County Building and Construction Trades Council; address, 2111 Webster Street, Oakland, California.

The name and address of appellant's attorney is Clarence E. Todd, 200 Bush Street, San Francisco, California.

The offense of which appellant was convicted is a violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act.

The date of the judgment appealed from was December 20, 1941.

The sentence was a fine of $5,000.00.

The above named appellant appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment above mentioned on the grounds set forth below.

Dated at Oakland, California, December —, 1941.

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL

By J. H. QUINN
President

By CHARLES R. GURNEY
Secretary

CLARENCE E. TODD
Attorney for Appellant
200 Bush Street
San Francisco [1085]

Grounds of Appeal

1. That the verdict is contrary to law.

2. That the Court erred in the decision of questions of law arising during the course of the trial and which rulings were duly excepted to by this appellant.

3. That the Court erred in denying the motion of this appellant to dismiss based upon the insufficiency of the indictment to state an offense, which rulings were duly excepted to by appellant.

4. That the Court erred in numerous rulings

upon the admissibility of evidence which were highly prejudicial to this appellant and excepted to by this appellant, all as appears in the official stenographic reporter's transcript of the proceedings had and taken at the trial.

5. That the Court erred in denying the motions of this appellant to dismiss or for a directed verdict of acquittal upon the grounds of the insufficiency of the evidence to sustain a verdict of conviction, which rulings were duly excepted to by this appellant.

6. That there is a fatal variance between the charge of the indictment and the proof in this, that the indictment alleges that defendant manufacturers agreed to accede and did accede to wage scale demands of defendant unions, in return for which defendant unions agreed to engage and have engaged in activities to restrain the sale and shipment of millwork and patterned lumber in interstate commerce and that in so agreeing and engaging defendant unions were not acting to enforce or protect the right to bargain collectively nor in the course of a legitimate labor dispute as to wages, hours and working conditions, or as to any other legitimate objective of labor, whereas the proof is to the contrary and diametrically opposed to such allegations of the indictment. [1086]

7. That the Court misdirected the jury in matters of law and in instructing and refusals to instruct the jury, and such errors and rulings were highly prejudicial to this defendant and duly excepted to by this defendant, all as appears in the

official stenographic reporter's transcript of the proceedings had and taken at the trial and of the charge given by the Court and the proposed instructions submitted and filed by defendants and which are of record in the actions.

8. That the verdict is contrary to the evidence.

9. That there is no evidence to sustain the verdict.

10. That there is insufficient evidence to sustain the verdict.

11. That the evidence in the case is as consistent with innocence as with guilt.

12. That counsel prosecuting the case were guilty of prejudicial misconduct during the trial and before the jury in comments relative to defendants who had made a plea of nole contendere and by reference to such as pleas of guilt; that the Court erred in its rulings and statements concerning such pleas over the objections of this defendant and to which this defendant reserved exceptions.

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL

By J. H. QUINN
President

By CHARLES R. GURNEY
Secretary

CLARENCE E. TODD
Attorney for Appellant
200 Bush Street
San Francisco

Received a copy of the within Notice of Appeal this 26th day of December, 1941.

THURMAN ARNOLD
FRANK J. HENNESSY
A. J. ZIRPOLI
TOM C. CLARK
WALLACE HOWLAND
CHARLES S. BURDELL
WALTER LEHMAN
By WALTER LEHMAN
Attorneys for Plaintiff

[Endorsed]: Filed Dec. 26, 1941. [1087]

[Title of Court and Cause.]

NOTICE OF APPEAL OF APPELLANTS BOORMAN LUMBER COMPANY, et al.

I. Names and Addresses of Appellants

Boorman Lumber Company
10035 East 14th Street, Oakland, Calif.

Hogan Lumber Company,
Second & Alice Streets, Oakland, Calif.

Loop Lumber & Mill Company,
Broadway & Blanding, Alameda, Calif.

Smith Lumber Company, a corporation,
19th Avenue and Estuary, Oakland, Calif.

Tilden Lumber Company, a corporation,
1519 Nevin Street, Richmond, Calif.

E. K. Wood Lumber Company, a corporation,
Frederick & King Streets, Oakland, Calif.

Zenith Mill & Lumber Company, a corporation,
2101 East 12th St., Oakland, Calif.
Eureka Mill & Lumber Co., a corporation,
3737 San Leandro Ave., Oakland, Calif.
Wood Products, Inc.,
1924 Broadway, Oakland, Calif.

II. The Name and Address of Appellants' Attorney is:

Morgan J. Doyle,
2314 Shell Building, San Francisco, Calif.

III. Offense:

An alleged violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

IV. Date of Judgment:

December 20, 1941.

V. Brief Description of Judgment or Sentence:

A fine in the amount of $2,000.00 was imposed upon each of the above named appellants.

VI. A Succinct Statement of the Grounds of Appeal:

The grounds of appeal, succinctly stated, are, that the indictment herein, (first count thereof) does not allege facts sufficient to constitute a public offense.

We, the above named appellants, and each of the above named appellants, hereby appeal to the United States Circuit [1088] Court of Appeals for the Ninth Circuit from the judgment and judg-

ments above mentioned, on the grounds set forth hereinbefore.

BOORMAN LUMBER COMPANY,
By GEO. CLAYBERG
HOGAN LUMBER COMPANY
By THOMAS P. HOGAN, JR.
LOOP LUMBER & MILL COMPANY,
By WILLIAM CHATHAM
SMITH LUMBER COMPANY, a corporation,
By REGINALD SMITH
TILDEN LUMBER COMPANY, a corporation,
By VICTOR J. HERMAN
E. K. WOOD LUMBER COMPANY, a corporation,
By JOHN B. WOOD
ZENITH MILL & LUMBER COMPANY, a corporation,
By ROY M. DREISBACH
EUREKA MILL & LUMBER CO., a corporation,
By CLARENCE T. GILBERT
WOOD PRODUCTS, INC.,
By D. N. EDWARDS

Dated: December 24, 1941.

MORGAN J. DOYLE,
Attorney for Appellants

[Endorsed]: Filed Dec. 26, 1941. [1089]

[Title of Court and Cause.]

NOTICE OF APPEAL OF APPELLANTS D. N. EDWARDS, NELS E. NELSON, ROBERT W. SHANNON, AND ANDREW NELSON.

I. Names and Addresses of Appellants:

D. N. Edwards,
1924 Broadway,
Oakland, Calif.

Nels E. Nelson,
1 Castro Street,
Hayward, California.

Robert W. Shannon,
400 Davis Street,
San Leandro, California.

Andrew Nelson,
10th & Ohio Streets,
Richmond, Calif.

II. The Name and Address of Appellants' Attorney is:

Morgan J. Royle,
2314 Shell Building,
San Francisco, Calif.

III. Offense:

An alleged violation of Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Antitrust Act.

IV. Date of Judgment:

December 22, 1941.

V. Brief Description of Judgment or Sentence:

A fine in the amount of $1,000.00 was imposed upon each of the above named appellants.

VI. Name of Prison Where Now Confined, if not on Bail:

At liberty.

VII. A Succinct Statement of the Grounds of Appeal:

The grounds of appeal, succinctly stated, are, that the indictment herein, (first count thereof) does not allege facts sufficient to constitute a public offense.

We, the above-named appellants, and each of the above named appellants, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment and judgments above mentioned, on the grounds set forth hereinbefore. [1090]

D. N. EDWARDS
NELS E. NELSON
ROBERT W. SHANNON
ANDREW NELSON

Dated: December 24, 1941.

MORGAN J. DOYLE
Attorney for Appellants

[Endorsed]: Filed Dec. 26, 1941. [1091]

[Title of District Court and Cause.]

NOTICE OF APPEAL BY CERTAIN DEFENDANTS AND APPELLANTS

Names and Addresses of Appellants:

The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America,
200 Guerrero Street,
San Francisco, California;

The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42,
200 Guerrero Street,
San Francisco, California;

The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550,
2111 Webster Street,
Oakland, California;

J. F. Cambiano,
17 Aragon Boulevard,
San Mateo, California; [1092]

Charles Helbing,
713 4th Avenue,
Redwood City, California;

C. H. Irish,
3569 Laguna Avenue,
Oakland, California;

W. P. Kelly,
2710 San Jose Avenue,
Alameda, California;

Walter O'Leary,
640 60th Street,
Oakland, California;

Emil H. Ovenberg,
763 Haight Avenue,
Alameda, California;

Dave Ryan,
530 14th Street,
San Francisco, California;

W. L. Wilcox,
224 Miramar Avenue,
San Francisco, California;

Charles Roe,
561 Pearl Avenue,
Hayward, California.

Names and Addresses of Appellants' Attorneys:

Joseph O. Carson, II,
222 East Michigan Street,
Indianapolis, Indiana;

Harry N. Routzohn,
1212 Third National Bank Building,
Dayton, Ohio;

Hugh K. McKevitt,
Jack M. Howard,
1620 Russ Building,
San Francisco, California.

Offense:

Violation of Sherman Anti-Trust Act, 26 Stat. 209, Section 1 (15 USCA, Section 1), by conspiracy to restrain interstate trade and commerce in mill work and patterned lumber.

Date of Judgement:

December 20, 1941.

Brief description of judgment or sentence:

Conviction pursuant to jury verdict of combining and conspiring for the purpose of unduly, unreasonably and directly restraining interstate trade and commerce in mill work and patterned lumber and unduly and unreasonably and directly restraining such interstate trade and commerce as [1093] intended by such combination and conspiracy in violation of the Sherman Anti-Trust Act, 26 Stat. 209, Section 1 (15 USCA, Section 1), for which appellants were sentenced as follows:

The Bay Counties District Council of Carpenters of the United Brotherhod of Carpenters and Joiners of America, to pay fine of Five Thousand ($5,000.00) Dollars, lawful money of the United States of America;

The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, to pay fine of Five Thousand ($5,000.00) Dollars, lawful money of the United States of America;

The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, to pay fine of Five Thousand ($5,000.00)

Dollars, lawful money of the United States of America;

J. F. Cambiano, to pay fine of Five Thousand ($5,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months;

Charles Helbing, to pay fine of One Thousand ($1,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months;

C. H. Irish, to pay fine of One Thousand ($1,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months;

W. P. Kelly, to pay fine of One Thousand ($1,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months;

Walter O'Leary, to pay fine of One Thousand ($1,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months; [1094]

Emil H. Ovenberg, to pay fine of One Thousand ($1,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a

county jail for a period of six (6) months;

Dave Ryan, to pay fine of Five Thousand ($5,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months;

W. L. Wilcox, to pay fine of One Thousand ($1,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months;

Charles Roe, to pay fine of One Thousand ($1,000.00) Dollars, lawful money of the United States of America, or in default of payment of said fine to be imprisoned in a county jail for a period of six (6) months.

Name of prison where now confined, if not on bail:

None, appellants sentenced to pay fines as aforesaid.

We, the above named appellants, hereby each severally appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above-mentioned on the grounds set forth below.

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

By DAVE RYAN, Sect.

Appellant.

THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, MILLMEN'S UNION NO. 42

By R. H. MILLER, President

Appellant. [1095]

THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, MILLMEN'S UNION NO. 550

By JOHN TOEDT, President

Appellant.

J. F. CAMBIANO,

Appellant.

CHARLES HELBING,

Appellant.

C. H. IRISH,

Appellant.

W. P. KELLY,

Appellant.

WALTER O'LEARY,

Appellant.

EMIL OVENBERG,

Appellant.

DAVE RYAN,

Appellant.

W. L. WILCOX,

Appellant.

CHARLES ROE,

Appellant.

Dated: December 24th, 1941. [1096]

Grounds of appeal of each appellant severally:

1. That the facts stated in the indictment do not constitute a public offense.

2. That the facts alleged in the indictment fail to state a violation of the Sherman Anti-Trust law.

3. That the indictment is defective in the particulars specified in the demurrer of appellant.

4. That the Court erred in overruling the demurrer of appellant to the indictment.

5. That the Court erred in denying the motion and demand of appellant for a bill of particulars.

6. That the Court erred in sustaining the demurrer to the plea of abatement filed by appellant.

7. That the verdict and the judgment are each contrary to law.

8. That the Court erred in the decision of questions of law arising during the course of the trial and which rulings were duly excepted to by appellant.

9. That the Court erred in denying the motion of appellant to dismiss, based upon the insufficiency of the indictment to state an offense, which ruling was duly excepted to by appellant.

10. That the Court erred in numerous rulings upon the admissibility of evidence which were highly prejudicial to appellant and excepted to by appellant.

11. That the Court erred in denying the motions of appellant, made at the conclusion of the prosecution's case and at the close of the case, to dismiss or for a directed verdict of acquittal upon the

ground of the insufficiency of the evidence to sustain a verdict of conviction and which rulings were duly excepted to by appellant.

12. That the Court misdirected the jury in matters of law and in instructing and refusals to instruct the jury, and such rulings were highly prejudicial to appellant and duly excepted to by [1097] appellant.

13. That the verdict and judgment are each contrary to the evidence.

14. That there is no evidence to sustain the verdict and judgment.

15. That there is insufficient evidence to sustain the verdict and judgment.

16. That the evidence in the case is at least as consistent with innocence as with guilt.

17. That there is a fatal variance between the charge of the indictment and the proof, in this, that the indictment alleges that defendant manufacturers agreed to accede and did accede to wage scale demands of defendant unions in return for which defendant unions agreed to engage and have engaged in activities to restrain the sale and shipment of mill work and patterned lumber in interstate commerce, and that in so agreeing and engaging defendant unions, including this appellant, were not acting to enforce or protect the right to bargain collectively nor in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, whereas, the proof is to the contrary and

diametrically opposed to such allegations of the indictment.

18. That counsel prosecuting the case were guilty of prejudicial misconduct during the trial and before the jury in comments relative to the defendants who had made a plea of nolo contendere, and by reference to such as pleas of guilt; that the Court erred in its rulings and statements concerning such pleas over the objections of appellant and to which appellant reserved exceptions.

19. That the Court erred in denying the motion of appellant for a new trial.

20. That the Court erred in denying the motion of appellant [1098] in arrest of judgment.

21. That the Court erred in denying motions to quash the subpoenas duces tecum, which required the production before the Grand Jury which returned the indictment of the private books, papers and records of the appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42 and The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, all of whom are voluntary unincorporated associations, and which private books, papers and records were used in the prosecution of the case.

22. That appellant was immunized from prosecution in the case by reason of the compulsory production of its or his private papers, books and records at the trial and the introduction thereof in evidence, over the objections of appellant and to

the overruling of which objections exceptions were reserved, and that such compulsory production and introduction in evidence of private papers, books and records violated the rights of appellant under the Fourth and Fifth Amendments to the Constitution of the United States.

The appellant Dave Ryan states the following additional ground of appeal:

That he has at all times been immune from prosecution in the case by reason of having been compelled to appear and testify against himself before the Grand Jury which returned the indictment and over his objections and after having interposed a claim of immunity.

The appellant Charles Helbing states the following additional ground of appeal:

That he has at all times been immune from prosecution in the [1099] case by reason of having been compelled to appear and testify against himself before the Grand Jury which returned the indictment and over his objections and after having interposed a claim of immunity.

The appellant Walter O'Leary states the following additional ground of appeal:

That he has at all times been immune from prosecution in the case by reason of having been compelled to appear and testify against himself before the Grand Jury which returned the indictment and over his objections and after having interposed a claim of immunity.

The appellants J. F. Cambiano, Charles Helbing, C. H. Irish, W. P. Kelly, Walter O'Leary, Emil H.

Ovenberg, Dave Ryan, W. L. Wilcox and Charles Roe each severally state the following additional ground of appeal:

That the portion of the judgment and sentence providing that in default of payment of his fine he be imprisoned in a county jail for a period of six months is illegal and void.

JOSEPH O. CARSON, II,
HARRY N. ROUTZOHN,
HUGH K. McKEVITT,
JACK M. HOWARD,
Attorneys for Appellants.

(Admission of service)

[Endorsed]: Filed Dec. 26, 1941. [1100]

[Title of District Court and Cause.]

NOTICE OF APPEAL OF APPELLANT THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA.

Name and address of appellant: The United Brotherhood of Carpenters and Joiners of America, Carpenters Building, 222 East Michigan Street, Indianapolis, Indiana. [1101]

Names and addresses of appellant's attorneys:

Hugh K. McKevitt,
Attorney for Defendant The United Brotherhood of Carpenters and Joiners of America,
1620 Russ Building,
San Francisco, Calif.

Charles H. Tuttle,
15 Broad Street,
New York, N. Y.
Joseph O. Carson,
222 East Michigan Street,
Indianapolis, Indiana.
Thomas E. Kerwin,
15 Broad Street,
New York, N. Y.
Of Counsel for Defendant The United Brotherhood of Carpenters and Joiners of America.

Offense:

Violation of Sherman Anti-Trust Act, 26 Stat. 209, Section 1 (15 USCA, Section 1), by conspiracy to restrain interstate trade and commerce in mill work and patterned lumber.

Date of Judgment:

December 20, 1941.

Brief description of judgment and sentence:

Conviction pursuant to jury verdict of combining and conspiring to restrain interstate trade and commerce in mill work and patterned lumber in violation of the Sherman Anti-Trust Act, 26 Stat. 209, Section 1 (15 USCA, Section 1), for which appellant was sentenced to pay a fine of Five Thousand ($5,000.00) Dollars, lawful money of the United States of America.

Name of prison where now confined, if not on bail:

None, appellant sentenced to pay fine as aforesaid. [1102]

We, the above named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above-mentioned on the grounds set forth below.

Dated: December 22nd 1941.

THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, APPELLANT,
By WM. L. HUTCHESON,
General President. [1103]

Grounds of appeal:

1. That the facts stated in the indictment do not constitute a public offense.

2. That the facts alleged in the indictment fail to state a violation of the Sherman Anti-Trust Law.

3. That the indictment is defective in the particulars specified in the demurrer of this appellant.

4. That the Court erred in overruling the demurrer of this appellant to the indictment.

5. That the Court erred in sustaining the demurrer to the plea of abatement filed by this appellant.

6. That the verdict and the judgment are each contrary to law.

7. That the Court erred in the decision of questions of law arising during the course of the trial and which rulings were duly excepted to by this appellant.

8. That the Court erred in denying the motion of this appellant to dismiss, based upon the in-

sufficiency of the indictment to state an offense, which ruling was duly excepted to by this appellant.

9. That the Court erred in numerous rulings upon the admissibility of evidence which were highly prejudicial to this appellant and excepted to by this appellant.

10. That the Court erred in denying the motion of this appellant to dismiss or for a directed verdict of acquittal upon the ground of the insufficiency of the evidence to sustain a verdict of conviction and which ruling was duly excepted to by this appellant.

11. That the Court misdirected the jury in matters of law and in instructing and refusals to instruct the jury, and such rulings were highly prejudicial to [1104] this appellant and duly excepted to by this appellant.

12. That the verdict and judgment are each contrary to the evidence.

13. That there is no evidence to sustain the verdict or the judgment.

14. That there is insufficient evidence to sustain the verdict and the judgment.

15. That the evidence in the case is at least as consistent with innocence as with guilt.

16. That there is a fatal variance between the charge of the indictment and the proof, in this, that the indictment alleges that defendant manufacturers agreed to accede to and did accede to wage scale demands of defendant unions in return for which defendant unions agreed to engage and have engaged in activities to restrain the sale and shipment

of mill work and patterned lumber in interstate commerce, and that in so agreeing and engaging defendant unions, including this appellant, were not acting to enforce or protect the right to bargain collectively nor in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, whereas, the proof is to the contrary and diametrically opposed to such allegations of the indictment.

17. That counsel prosecuting the case were guilty of prejudicial misconduct during the trial and before the jury in comments relative to the defendants who had made a plea of nolo contendere, and by reference to such as pleas of guilt; that the Court erred in its rulings and statements concerning such pleas over the objections of this appellant and to which appellant reserved exceptions. [1105]

18. That the Court erred in denying the motion of this appellant for a new trial.

19. That the Court erred in denying the motion of this appellant in arrest of judgment.

20. That this appellant was immunized from prosecution in the case by reason of the compulsory production of its private papers, books and records at the trial and the introduction thereof in evidence, over the objections of this appellant and to the overruling of which objections exceptions were reserved, and that such compulsory production and introduction of private papers, books and records violated the rights of this appellant under the Fourth and Fifth Amendments to the Constitution of the United States.

21. That the Court erred in denying the motion of this appellant for a bill of particulars.

HUGH K. McKEVITT,
CHARLES H. TUTTLE,
JOSEPH O. CARSON,
THOMAS E. KERWIN,
Attorneys for Appellant The United Brotherhood of Carpenters and Joiners of America.

(Admission of Service)

[Endorsed]: Filed Dec. 26, 1941. [1106]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS OF APPELLANTS LUMBER PRODUCTS ASSOCIATION, INC., ET AL.

Lumber Products Association, Inc., a corporation; Acme Manufacturing Co., Inc., a corporation, Eureka Sash, Door & Moulding Mills, a corporation, Carl Warden, Harry W. Gaetjen, Charles Monson, Fred Spencer, W. P. Holmes, J. A. Hart, Charles Gustafson and Christian A. Wilder, appellants in the above entitled cause, file the following assignment of errors of which they complain, and upon which they will rely in the prosecution [1107] of the appeal in said cause, from the respective judgments of this court entered against them on December 20, 1941:

1. The court erred in overruling the demurrer filed by defendants Lumber Products Association, Inc., a corporation, Acme Manufacturing Co., Inc., a corporation, Eureka Sash, Door & Moulding Mills, a corporation, J. A. Hart (under the name of J. A. Hart Mill & Lumber Co.), Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, Sage & Wilder, a partnership, W. P. Holmes (under the name of W. P. Holmes Mill & Cabinet Shop), Carl Warden, Harry W. Gaetjen, Charles Monson and Fred Spencer to Count One of the indictment.

2. The court erred in denying the motions of defendants Warden Brothers, a partnership, Brannan Street Planing Mill, a partnership, and Sage & Wilder, a partnership, to quash Count One of the indictment.

3. Count One of the indictment does not state facts sufficient to constitute any offense by any of these appellants against the United States, either under Section 1 of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Act, or otherwise.

4. The court erred in rendering judgment against and imposing sentence on each of these appellants, because Count One of the indictment fails to state facts sufficient to constitute an offense by any of these appellants against the United States, and because the demurrers heretofore filed by these appellants to Count One of the indictment should have been sustained.

And appellants Christian A. Wilder and Charles

Gustafson further assign the following errors of which they (but not the other appellants named above) will complain, and upon which they [1108] will rely, in addition to the foregoing errors, in the prosecution of said appeal.

5. The court erred in denying the motions of Christian A. Wilder and Charles Gustafson to quash bench warrants, to vacate order for issuance thereof, and to discharge bail.

6. The court erred in overruling the plea to the jurisdiction filed herein by Christian A. Wilder and Charles Gustafson.

7. The court erred in overruling the demurrer of Christian A. Wilder and Charles Gustafson to Count One of the indictment.

8. The indictment did not indict or name as defendants either Charles Gustafson or Christian A. Wilder.

9. The court erred in rendering judgment against, and in imposing sentence on, Christian A. Wilder and Charles Gustafson, because, in addition to the reasons stated in assignment No. 4 above, neither Charles Gustafson nor Christian A. Wilder had been indicted by or named as defendant in the indictment, and no charge had been brought against either of them.

10. The court erred in rendering judgment against, and in imposing sentence on, Christian A. Wilder and Charles Gustafson, because (1) if Christian A. Wilder was indicted, it was only through the indictment of Sage & Wilder, and if Charles Gustafson was indicted, it was only through the

indictment of Brannan Street Planing Mill, and (2) the indictment was dismissed against Sage & Wilder and against Brannan Street Planing Mill on November 6, 1941.

Wherefore, said appellants, by reason of the errors aforesaid, pray that the judgments and sentences against [1109] and upon them, under the indictment herein, may be reversed and held for naught.

Dated: February 20, 1942.

JAMES M. THOMAS,
MAURICE E. HARRISON,
MOSES LASKY,
BROBECK, PHLEGER & HARRISON,
Attorneys for Appellants Named Above.

Due service and receipt of a copy of the within is duly admitted this 20th day of February, 1942.

TOM C. CLARK,
WALKER M. LEHMAN,
Attorneys for Respondent.

[Endorsed]: Filed Feb. 20, 1942. [1110]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS OF APPELLANTS BOORMAN LUMBER COMPANY, ET AL.

Boorman Lumber Company, Hogan Lumber Company, Loop Lumber & Mill Company, Smith Lumber Company, a corporation, Tilden Lumber Company, a corporation, E. K. Wood Lumber Company, a corporation, Zenith Mill & Lumber Company, a corporation, Eureka Mill & Lumber Co., a corporation, and Wood Products, Inc., a corporation, appellants in the above entitled cause, file the following assignment of errors of which they complain, and upon which they will rely in the prosecution of the appeal in said cause, from the respective judgments of this court entered against them on December 20, 1941: [111].

1. The court erred in rendering judgment against and imposing sentence on each of these appellants because Count One of the indictment fails to state facts sufficient to constitute an offense by any of these appellants against the United States.

Wherefore, said appellants, by reason of said errors aforesaid, pray that the judgment and sentences against and upon them, under the indictment herein may be reversed and held for naught.

Dated: February 23rd, 1942.

ORGAN J. DOYLE,
Attorney for Appellants
Named Hereinabove.

Service of the foregoing Assignment of Errors this 23rd day of February, 1942 is hereby acknowledged.

JOSEPH T. MURPHY,
Special Attorney Anti-Trust Div.

[Endorsed]: Filed Feb. 23, 1942. [1112]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS OF APPELLANTS D. N. EDWARDS, NELS E. NELSON, ROBERT W. SHANNON, AND ANDREW NELSON.

D. N. Edwards, Nels E. Nelson, Robert W. Shannon, and Andrew Nelson, appellants in the above entitled cause, file the following assignment of errors of which they complain, and upon which they will rely in the prosecution of the appeal in said cause, from the respective judgments of this court entered against them on December 22, 1941:

1. The Court erred in rendering judgment against and imposing sentence on each of these appellants because Count One of the indictment fails to state facts sufficient to constitute an of- [1113] fense by any of these appellants against the United States.

Wherefore, said appellants, by reason of said errors aforesaid, pray that the judgments and sen-

tences against and upon them, under the indictment herein may be reversed and held for naught.

Dated: February 23rd, 1942.

MORGAN J. DOYLE
Attorney for Appellants
named hereinabove.

Service of the foregoing praecipe this 23rd day of February, 1942, is hereby acknowledged.

JOSEPH F. MURPHY
Special Atty. Anti-Trust Div.

[Endorsed]: Filed Feb. 23, 1942. [1114]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS BY CERTAIN UNION DEFENDANTS AND APPELLANTS.

Come now the defendants and appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550; J. F. Cambiano, Charles Helbing, C. H. Irish, W. P. Kelly, Walter O'Leary, Emil H. Ovenberg, Dave Ryan, W. L. Wilcox and Charles Roe, and specify that in the proceedings before the District Court manifest errors occurred to the prejudice, and to the prejudice of each of them, through rulings to each of

which they duly excepted, it having been stipulated between the parties and understood with the Court at the trial as follows:

"Mr. Howard: May we have an exception?

"The Court: Yes, I am willing to let it be under- [1115] stood that an exception will be noted to every ruling of the Court, so that you won't have to ask me that question every time. Is that agreeable to you?

"Mr. Howard: Yes.

"Mr. Faulkner: Does the Government acquiesce in that statement?

"The Court: I say I am willing that the record should show that an exception has been made to every ruling made in this case on behalf of each and every defendant.

"Mr. Faulkner: That is agreeable to Counsel for the Government?

"Mr. Howland: That is agreeable to the Government.

"The Court: You will understand that there is no necessity of voicing any exception whatever;"

that they severally assign the following errors and by this reference incorporate therein the exception taken and reserved by the foregoing stipulation as though quoted separately in each assignment to which the stipulation is applicable:

1. The Court erred in overruling the Demurrer of these appellants to the indictment in that the indictment fails to state facts constituting a public offense against these appellants or any of them.

2. The Court erred in denying the motions of these appellants to dismiss based upon the insufficiency of the indictment to state an offense.

3. The Court abused its discretion in denying the motion and demand of these appellants for a Bill of Particulars in that the indictment is so general and uncertain as to the complicity and relation of each defendant that the particulars demanded were necessary to enable them to properly prepare and present their defense.

4. The Court erred because of the insufficiency of [1116] the evidence in denying the motions of these appellants made at the conclusion of the plaintiff's case, and repeated at the close of the case, to dismiss or for a directed verdict of acquittal, and made upon the grounds:

That there was insufficient evidence to show a violation of the Sherman Act (26 Stat. 209) by these appellants, or any of them; and

that the evidence affirmatively showed the appellants were acting in connection with or as a result of a labor dispute, and any acts shown in the evidence were immunized by the Clayton Act (38 Stat. 730, Sec. 6-20) and the Norris-LaGuardia Act (47 Stat. 29); and——

that plaintiff failed to prove the allegations of Paragraph 29 of the indictment referring to the lack of a labor dispute and that the unions were not carrying on legitimate objectives of labor; and

that as to each appellant there was a lack of

any clear proof that he or it participated in, authorized or ratified any unlawful act; and that there was no proof of an unlawful intent on the part of any appellant.

5. There is insufficient evidence to sustain the verdict and judgment and the verdict and judgment are each contrary to the evidence in that it affirmatively appears therefrom that all acts and conduct of these appellants was lawful and proper under the Clayton Act (38 Stat. 730, Sec. 6-20) and the Norris-LaGuardia Act (47 Stat. 29).

6. There is a fatal variance between the charge of the indictment and the proof, in this, that the indictment alleges that defendant manufacturers agreed to accede to and did accede to wage scale demands of defendant unions in return for which defendant unions agreed to engage and have engaged in activities [1117] to restrain the sale and shipment of millwork and patterned lumber in interstate commerce, and that in so agreeing and engaging defendant unions, including these appellants, were not acting to enforce or protect the right to bargain collectively nor in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, whereas, the proof is to the contrary and diametrically opposed to such allegations of the indictment, and shows without conflict that appellants, and each of them, were acting in furtherance of their collective bargaining rights and in the course of legitimate labor disputes as to

wages, hours and working conditions and to promote legitimate objectives of labor.

7. The Court erred in permitting the witness, Lee Moffett, to testify in behalf of plaintiff over the objection of these appellants, as follows:

"I know Mr. D. N. Edwards. I met him twice, I believe. I met him first in Oakland, as I recall it, in September, 1937, and had a conversation with him at that time.

"Mr. Routzohn: We object, your Honor, as incompetent.

"Mr. Burdell: Mr. Edwards is a defendant, your Honor.

"Q. Did you have a conversation with Mr. Edwards at that time?

"A. Yes, I did.

"Q. What was the subject matter of the conversation?

"Mr. Routzohn: We object, if your Honor please——

"The Court: Overruled.

"Mr. Routzohn: In the first place, that calls for a conclusion; what was the subject matter.

"The Court: What was said between you?

"Mr. Routzohn: We object to that.

"The Court: Overruled.

"Mr. Faulkner: My objection is more than that [1118] stated by Judge Routzohn. We object on the ground it is incompetent, irrelevant and immaterial, and not binding upon the defendant here on trial, and no foundation laid,

in this, that there is no evidence in this case that a conspiracy of any kind, character or description existed between the witness on the stand and any defendant in this case, nor is there any showing of any nature in this case that the relation of Mr. Edwards was such that a conversation with this witness could be introduced other than hearsay as to these defendants.

"The Court: Does anybody wish to add anything?

"Mr. Tobriner: I wish to object on the further ground that there is no statement of the place where the conversation occurred, the time, or the parties present.

"The Court: Any further objections from anybody? Overruled.

"Mr. Faulkner: Exception. Your Honor, I presume——

"The Court: It goes to all the defendants, it is understood.

"Mr. Faulkner: Yes.

"The Court: It was understood in the beginning. It is still the understanding, isn't it?

"Mr. Routzohn: I presume so, your Honor."

"We discussed the use and distribution of lumber in the Bay area. I introduced myself as a representative of the Western Pine. Mr. Edwards took me through his plant and showed me his operations—his various ma-

chines. During that trip around the plant, he described his operations and brought up the subject of competition from the sawmills in regard to his business. He was manager of the Oakland Planing Mill at that time and he brought up the competition and he was more or less antagonistic toward the fact that sawmills were shipping lumber into the Bay area. I don't re- [1119] call the exact words. I couldn't repeat exactly what he said, because that happened some time ago, but I recall the substance to a certain extent. The subject was the discussion of competition between the Bay district planing mills and sawmills in the Northwest.

"Q. What did Mr. Edwards say about that?

"Mr. Routzohn: We object on the ground that it is incompetent, irrelevant and immaterial what he may have said about competition.

"The Court: Overruled.

"Mr. Routzohn: From the sawmills in the Northwest.

"The Court: Overruled.

"Mr. Routzohn: We object because it is not binding on any of our defendants unless a conspiracy is shown and there has been no conspiracy shown.

"The Court: A conspiracy will have to be shown or it won't be binding on anybody.

"Mr. Burdell: It is offered subject to that connection, your Honor.

"The Court: I understand that. Have you fully answered the question? Read the question."

"He said he was opposed to the sawmills shipping certain items into the Bay area. I didn't say very much of anything, because I was listening. I recall just the substance of his statement. I couldn't repeat words, but at that time his plant was rather quiet and we mentioned that, and he said that that was the reason that there was slack business in the Bay district, because the sawmills were shipping lumber in here in competition such that they could not compete with it locally. At that meeting that seems about all that was discussed." [1120]

8. The Court erred in permitting the witness, Lee Moffett, to testify in behalf of plaintiff over the objection of these appellants, as follows:

"I met Mr. Edwards again a week or two later in the Ray Building in Oakland. Besides us, there was one other gentleman there. I believe he was secretary of the Retail Dealers' Association. I met Mr. Edwards in this gentleman's office.

"Q. What was said at that meeting, Mr. Moffett, by you and by Mr. Edwards in substance?

"Mr. Faulkner: The same objection, your Honor, as to the last conversation. (Such objection is quoted in full in assignment number

7 and by this reference the grounds of objection are incorporated herein).

"The Court: Overruled.

"Mr. Edwards took me into his private office and we talked a while, and he explained the reason for having this office as well as an office at his place of business which was the Oakland Planing Mill, and he told me the reason he maintained this office in the Ray Building was it was a place to negotiate with the various unions and their officials, and maintain relations with his association of Millwork Operators. He told me the nature of these negotiations that they had this association of Millwork Operators and were in a position to negotiate with the unions and receive certain concessions in return for their promise of obtaining more work for the local millmen; that by excluding certain items of lumber from the sawmills [1121] they would be in a position to hire more men in the Bay district, and the object of his office in the building was to control these various restrictions and to contact and negotiate with the union officials. He said that it had been quite successful and that he expected in a short time they would be able to extend these restrictions to cover all items of millwork, also surfaced lumber and molding, knotty pine paneling and items of that nature, would not—other items are excluded from coming into the Bay district from the sawmills."

9. The Court erred in permitting the witness, Louis Wine, to testify in behalf of plaintiff over the objection of these appellants, as follows:

"It was a meeting in the office of the Lumber Products Association. Approximately 18 were in attendance. Mr. Gaetjen addressed the meeting.

"Mr. Zirpoli: I am now offering this as to all defendants in the case.

"Mr. Faulkner: We object to anything that happened at that meeting as hearsay, immaterial, irrelevant, and incompetent, and not showing that that is an act or declaration pursuant to or in furtherance of the conspiracy, a meeting of indicted defendants who are not before the Court, in the presence of two Department of Justice Agents investigating a case, and comes within the rule that acts or declarations of a person to be binding on a co-defendant must be acts or declarations pursuant to and in furtherance of a common design or conspiracy, an act or declaration of a lot of men in the presence of Department of Justice Agents could not come within that category.

"Mr. Zirpoli: We will connect this up and show that it was a part and parcel of the conspiracy and in [1122] furtherance thereof.

"The Court: Overruled.

"Mr. Zirpoli: Q. You have told this was a

meeting at the Lumber Products Association.

"A. Yes.

"Q. You attended this meeting and Mr. Sherman was present also? A. Yes.

"Q. Will you tell us what Mr. Gaetjen said at this time, as you recall it?

"Mr. Faulkner: The same objection.

"The Court: Yes, overruled.

"A. Mr. Gaetjen said the meeting was called for the purpose of discussing a demand or request made by the Millmen's Union for an increase of salary, that they were asking for $9 a day and a 7-hour day. Mr. Gaetjen went on and stated that there was a verbal agreement between the Millmen and the Association to exclude from the San Francisco Bay area millwork that had not been in accordance with the current wage scale, and he thought that the unions had not lived up to their part of the agreement, and he also brought out in his exact words, the purpose of the agreement was to create a sort of a Chinese Wall around the San Francisco Bay area, but the unions had not been vigilant in keeping this lumber out, and he thought they would not be entitled to any increase in salary, and Mr. Gaetjen stated 'We are not in a position to pay them additional wages.'

"Mr. Faulkner: I ask the Court at this time to limit that testimony in such a manner that it cannot bind any employers or any per-

son in court.

"The Court: I will limit it subject to connecting it up.

"Mr. Zirpoli: I expect to connect it up.

"The Court: If it is not connected up it is subject to a motion to strike. Go ahead."

[1123]

10. The Court erred in permitting the witness, C. B. Sherman, to testify in behalf of plaintiff over the objection of these appellants, as follows:

"Q. Will you tell us what Mr. Gaetjen said at that meeting?

"Mr. Faulkner: We object to that as immaterial, irrelevant, and incompetent, hearsay as to the defendants on trial, and not within the issues of this case, and no foundation laid, in that there is no evidence that any act of declaration of Mr. Gaetjen at that time was pursuant to or in furtherance of the charge laid in this indictment.

"The Court: Overruled.

"Mr. Zirpoli: Q. Now, will you tell us what Mr. Gaetjen said at that time?

"A. Mr. Gaetjen called the meeting to order, and as I recall, he said—the first thing he did was to introduce Mr. Wine and myself as members of the F.B.I., and then stated the purpose of the meeting was to determine whether or not the Association would go on record as approving a new union demand for increased wages. He said that, as the mem-

bers there would recall, they had an agreement to increase the wage scale in the past, and that they had agreed to do it on the condition that the union would cooperate with them in keeping the millwork products out of, that is, the products from Washington and Oregon out of the Bay area, and he said that under the agreement that they had made the products from those two particular States, Washington and Oregon, would not be worked on by the union when they were sent in here, and that, in effect, it would build a sort of Chinese Wall around the Bay area. He did state, however, that he was going on record as not being in [1124] favor of the new wage increase, due to the fact that the unions had not carried out their end of the previous agreement that he talked about, that instead of keeping the products out and building a sort of Chinese Wall around this area they had made such demands on the Lumber Association here, the Lumber Products Association, that it built a sort of Chinese Wall around the Bay area, and that he wanted their expression of opinion as to whether or not they would be in favor of the wage increase.

"That is about all I recall."

11. The Court erred in permitting the witness, James Stewart, to testify in behalf of plaintiff over the objection of these appellants, as follows:

"A. One day I had placed an order through

our buyer in San Francisco with an outfit to get in a lot of sash and doors so we could have a surplus stock, and he placed the order and told me the mills would deliver it on such and such a date, and I received a telephone call stating that it had been heard that I had purchased merchandise coming in other than from the five counties.

"Q. Just a moment, do you recall when this telephone call occurred?

"A. In the morning, but not what date.

"Mr. Routzohn: We object unless this telephone call was with one of the defendants or somebody connected with the defendants.

"Mr. Burdell: I have not asked for the conversation.

"Q. Do you know who called?

"A. The party on the other end of the line said they were from the Mill Workers' Union on Webster Street, in Oakland—Mill Workers' Union, I won't say Webster Street. He said that he represented the Mill Workers' Union and had understood [1125] that we had a car of sash——

"Mr. Routzohn: I object to that.

"The Court: Overruled.

"Mr. Routzohn: We are objecting on the ground that there is nothing there to show that it was somebody from the Union, it is merely a telephone conversation.

"The Court: Q. Was it a man who rep-

resented himself to be a representative of the Union? A. He did.

"The Court: Overruled.

"Mr. Burdell: Q. What was the conversation, Mr. Stewart?

"Mr. Routzohn: When?

"Mr. Burdell: Q. When did this telephone conversation occur?

"A. In the early part of 1939, when I ordered these through Mr. McNamar.

"Q. Do you recall the month?

"A. No, I do not.

"Q. What was the conversation?

"A. This party called up and represented himself to me as someone from the Union in Oakland, and stated that they had heard we had placed an order with an out-of-the-five counties mill, and if they came in they would immediately picket our place, and not to bring it in to save ourselves any trouble.

"Q. Was there any further conversation on the phone?

"A. Not with that party, except, well, I did say, "What are you talking about? And they said, "You know what I am talking about.

"Q. Is that all? A. That was all.

"Q. What did you do?

"A. I called up Mr. McNamar and told him to cancel this order.

"Mr. Routzohn: We object to what he did with Mr. McNamar.

"The Court: Overruled. [1126]

"Q. I told Mr. McNamar to cancel the order with the company that he had ordered the sash and doors, that the Union had heard of it and prohibited us from taking it or they would picket us.

"Mr. Routzohn: We ask that the conversation be stricken out and the jury instructed not to regard it, and to pay no attention to it.

"The Court: Denied."

12. The Court erred in excluding the testimony on cross examination of plaintiff's witness, John Carrick, as follows:

"I discovered from experience "hot cargo" or "hot lumber" is something I could not buy. It meant something you can't bring in.

"Q. You couldn't bring it in because there was a dispute on, a war on labor between the C.I.O. and the Carpenters' Brotherhood, which was an A. F. of L. organization? Didn't you understand that?

"Mr. Zirpoli: I object to that as irrelevant, and immaterial. There is no issue involved in such a war.

"The Court: Sustained.

"Mr. Routzohn: That is all."

13. The Court erred in excluding the testimony on cross examination of plaintiff's witness, E. W. Yates, as follows:

"That material we bought from mills at Portland, the Jones Lumber Company, and a little Company at The Dalles, Oregon.

"Q. Did you know at that time and do you know now whether or not some of those companies were organized under the CIO?

"Mr. Zirpoli: I object. I have not interposed this [1127] objection, but it seems to me it is irrelevant and immaterial.

"The Court: I do not think it makes any difference whether it was the CIO or AFL. Sustained.

"Mr. Routzohn: Our point is, of course, if it did not bear the union stamp of the Carpenter Brotherhood of the AFL that we had a perfect right to keep it out.

"The Court: Objection sustained."

14. The Court erred in excluding the testimony on cross examination of plaintiff's witness, Willard B. Jefferson, as follows:

"Mr. Routzohn: Q. Was it non-union lumber that you purchased at that time?

"Mr. Clark: I object on the same grounds. (Immaterial, irrelevant and incompetent.)

"A. As far as I know, it was.

"The Court: Sustained."

15. The Court erred in excluding the testimony on the cross examination of plaintiff's witness, Emory J. Nutting, as follows:

"It was the purpose of these negotiations to attempt to arrive at some agreement. I would say my best recollection as to the period of time covered by the negotiations was 3 months.

"Q. Three months. During all of that time, Mr. Nutting, there was a dispute on, was there not, between the unions on the one hand and the mill owners on the other as to the rate of wages?

"Mr. Burdell: Just a moment. That calls for a conclusion of the witness and is improper cross examination and immaterial.

"The Court: Sustained.

"Mr. Routzohn: Q. Was there any other dispute on at that time? [1128]

"Mr. Burdell: Same objection.

"The Court: Sustained.

"Mr. Routzohn: I haven't asked my question yet.

"The Court: Well, the question is objectionable so far as it has gone. 'Was there any other dispute.'

"Mr. Routzohn: Q. What were these negotiations that lasted three months?

"Mr. Burdell: Objected to.

"The Court: It is quite clear the negotiations related to wages and with reference to an agreement and it was signed. Isn't that quite plain? Why take up time cross examining on that subject?

"Mr. Routzohn: If your Honor thinks I am taking too much time, I will desist.

"The Court: Well, I think it is quite clear what you are trying to show by this witness.

"Mr. Routzohn: Yes. Your Honor in the very beginning told us we would have to estab-

lish that there was a labor dispute. That is exactly what I am trying to show.

"The Court: You have asked him if there was a labor dispute, which you have no right to do.

"Mr. Routzohn: The witnesses have been asked for many a conclusion at this trial, I have noticed.

"The Court: That may be so."

16. The Court erred in admitting, over the objection of appellants, Exhibit 161, as follows:

"Minutes referred to are U. S. Exhibit No. 160 for identification. Letter marked U. S. Exhibit No. 161, for identification is a letter addressed to Building Trades Employers' Association, to my attention.

"Mr. Burdell; I understand that it is stipulated that this is Mr. Ennes' signature, and I want at this [1129] time to offer this letter in evidence.

"Mr. Faulkner: We object to it as immaterial, irrelevant, and incompetent, and hearsay as to the defendants, dividing the objection as to Mr. Ennes as an individual, and any other defendant represented by it, and upon the further ground that there is no foundation laid that communications between a member of the Building Trades Employers' Association is a part or parcel of the conspiracy charged here. In other words, there is nothing illegal about all of the employers

in San Francisco having an organization among themselves for their own protection, and the things that happen in that organization are not part and parcel of the conspiracy charged in this indictment, and could never be; and we submit that it is absolutely hearsay as to the defendants. Of course, as to Mr. Ennes, individually, it is not hearsay, but it would be immaterial as to him and hearsay as to all other defendants in the case.

"The Court: Overruled.

"Mr. Routzohn: The same objection.

"The Court: Overruled.

"Cross-Examination

"By Mr. Faulkner:

"I am the James L. McNally referred to in the paper I identified. The J. G. Ennes referred to in the letter is Mr. Ennes sitting at the table. I received the letter in the regular course of business. No reply was made to it.

"Thereupon, the letter was read, as follows, By Mr. Faulkner:

"'Cabinet Manufacturers Institute of California, Northern Division, 441 Call Building, San Francisco, July 20, 1938. [1130]

"'Building Trades Employers Association,
666 Mission Street
San Francisco

"'Attention Mr. James L. McNally, Secretary

"'Gentlemen:

"'We are handing you a copy of the Arbitration Board Award. The purpose of this letter is not to deal in retrospect but to be forward looking.'

"'The Employer member of the Board and their Technical Advisor signed the award as dissenting to the rate of wage. This is not to be in any sense understood as meaning that the Employers are not going to carry out the award in spirit and in fact. They are; and have signed a contract embodying the Award.

"'Arbitration is a medium of adjusting economic differences between the Employers and Organized Labor to the end that the Employer, Employee and the Public be saved the consequences of industrial strife.

"'We have subscribed to that policy. The B.T.E.A. agreement with organized Labor as to arbitration, of which we, as members, availed ourselves, is in our opinion, epochal as a mass arbitration agreement.

"'Neither in opening argument nor in rebuttal could we hold that the employees of Mill and Cabinet Shops were less skilled than certain other crafts of the construction industry receiving substantially higher rates of wage established by negotiation and arbitration. Nor could we give factual reasons for the present spread between the carpenter's wage as compared to the past spread. Excepting that since 1921 we have had to face in our bidding eco-

nomic horizons having lower rates of wages than those set up by our agreement and to be competitively sound, our rate of wage should not be appreciably higher than that [1131] of the competition we have to meet.

"'The Arbitration Board has handed down an Award of $9.00 and $8.00, which is the all time high in rate and the highest in percentage when compared to the carpenters' since 1921. The Arbitration Board has also said:

"'"Maintenance of Fair Labor Conditions.'

"'It is the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interests of the community, in aid of the maintenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions of said agreement.'

"'The rate of wages and the paragraph referred to are reciprocal, and that we may live up to the terms of the award we ask for the cooperation of all responsible parties.

"'This award, and in our opinion, all recent awards and agreements point clearly to the necessity of the B.T.E.A. functioning as a repository of certain factual economic experiences rather than opinions.

"'We expressed our viewpoint along this line at the last meeting, so will not go further into the matter here.

"'We wish to emphasize that this letter is not to be in any sense construed as critical of the award of the Arbitration Board. We hold the Board prevented strife, once embarked upon, the consequences of which are limitless. The neutral Chairman measured to the full stature of what we deem a neutral Arbitrator should be and the respective Arbitrators and Technical Advisors of the Employers and [1132] Employees used the 'rule of reason.'

"'We take this occasion to thank the B.T.E.A. for the material assistance they gave us in this matter.

"'Very truly yours,

"'CABINET MANUFACTURERS INSTITUTE OF CALIFORNIA NORTHERN DIVISION,

By J. G. ENNES,
Manager."

17. The Court erred in permitting the witness, William B. Hague, to testify in behalf of plaintiff over the objection of these appellants, as follows:

"Documents produced by the witness were marked U. S. Exhibit No. 163 for identification,—longhand notes or rough notes of an Industrial Relations Committee meeting made by me. Mr. Hilp and Mr. Tait and Mr. Edwards were present.

"Mr. Faulkner: The Industrial Relations Committee are not parties to this case; we object to what happened at the Industrial Relations Committee, there is no foundation laid that that was a meeting pursuant to or in furtherance of the charge in the conspiracy, and it is hearsay as to the defendants who were not present at the meeting.

"The Court: Overruled; proceed, please.

"Mr. Edwards, according to these notes and according to my memory of the meeting, the Committee wanted to find out what was the attitude of the East Bay Planing Mills on the arbitration award, and the East Bay was not going along on it, and Edwards was asked to explain why and as I recall he said they were not parties to the arbitration and explained the position of the East Bay mill owners with respect to the mills in San Francisco, and that was what the Committee was after, they did not want to have one situation in San Francisco and another situation [1133] in East Bay. They wanted to find out what was the trouble in the East Bay that they could not go along. Edwards explained at length. These notes do not cover Mr. Edwards' explanation. Mr. Edwards explained that the position of the East Bay was different to the San Francisco mills, because he claimed the large mills in the East Bay shipped their products all over Northern California

and also that they were in competition with mills that were clearly outside of the immediate Bay area. They were large mills—I forget the name, but there were two or three he mentioned not in Alameda County who were absolutely competitive with Alameda County, and that Alameda County must be in a position where it could meet that competition to successfully keep their mills going. To the best of my recollection he thought Article VIII a very bad clause, that they would make a lot of trouble."

18. The Court erred in denying the motion of appellants to strike the testimony of plaintiff's witness, Edward A. McCreedy, as follows:

"They told us they wanted the order cancelled because they had been told by the Unions they would not install it. That was on a teletype message to me from our New York manager. We also have a letter from the Penney Company. No one from the Penney Company told me why that installation was not made.

"Mr. Rontzohn: We ask, your Honor, all of this conversation be ruled out as being incompetent, irrelevant and immaterial and hearsay.

"The Court: Motion is denied. * * *"

"I talked to Mr. Wieland about the Penney job, in Grand Rapids, when he was there. The labor problem must [1134] have been dis-

cussed. He told me it would be necessary to cancel the job only because of the fact that they would not install it here. That is at least one reason for cancellation.

"Mr. Routzohn: Your Honor, we ask that all this be stricken out. I objected to it once before and your Honor did overrule me, but again I would like to make the motion so we can get it in the record.

"The Court: Very well.

"Mr. Routzohn: I ask all this be stricken out as to what somebody in his own concern told him, as being purely hearsay and not binding in any way on these defendants.

"The Court: Denied."

19. The Court erred in admitting in evidence, over the objection of appellants, and refusing to strike on motion of appellants, Exhibit 171, as follows:

"Exhibit 171, for identification, is a letter from Mr. Lewis of the construction department of J. C. Penney Company of New York City, addressed to the Manager of our New York office, confirming the telephone conversation as to cancellation of this order. It is from J. C. Penney Company to our Company in regard to the Penney job.

"Mr. Burdell: I offer this in evidence.

"Mr. Faulkner: We object to it, your Honor, as hearsay.

"The Court: Overruled.

"Mr. Routzohn: Same objection.

"Mr. Faulkner: May I call your Honor's attention particularly that this is a letter from a man named Lewis of the Penney Company to the Grand Rapids Company quoting a telegram from somebody else.

"That is all hearsay as to the defendants. [1135]

"Mr. Burdell: Well, it is the telegram from the J. C. Penney Company, the telegram is quoted.

"The Court: Overruled.

"(The letter was marked 'U. S. Exhibit No. 171.')

"Mr. Burdell: I will read it, if I may, at this time.

"The Court: Read it.

"Mr. Burdell: On the letterhead of J. C. Penney Company.

"'J. C. Penney Company Incorporated, 330 West 34th Street, New York N. Y.

September 17, 1938

"'Grand Rapids Store Equipment Company
420 Lexington Avenue
New York, N. Y.

Attention:—Mr. Lockwood

"'Gentlemen:

"'Concerning our telephone conversation, we are pleased to quote you verbatim the telegram received from our District Office in ref-

erence to the South San Francisco store fixtures:—

'Union served notice they will not handle Grand Rapids or Weber fixtures for South San Francisco store. Insist fixtures must be made under same conditions wages as Frisco area regardless union stamp.'

"We trust this is the information you desire.

Yours very truly,
J. C. PENNEY COMPANY, Inc.
H. C. Lewis,
Construction Department.'

"And the signature "Harold C. Lewis."

"Mr. Routzohn: Your Honor, I move all of this be stricken out for the reason that it is sheer hearsay and that the defendants in this case have no opportunity [1136] in the world to answer that sort of an assertion.

"The Court: Denied.

"Mr. Routzohn: By "opportunity," I would like to correct my statement, that we have no way of meeting or ascertaining who made the statement or of tracing it down in order to contradict anything that is stated in there.

"The Court: Well, your client knows whether or not that statement is true.

"Mr. Routzohn: How could he know, if the Court please?

"The Court: Don't argue.

"Mr. Routzohn: We don't know who so-

licited for the Penney Company. We don't know who talked to a solicitor for the Penney Company. We have no way of ascertaining the basis of that statement or who had anything to do with it.

"The Court: All right. Your objection is overruled."

20. The Court erred in excluding the testimony on cross-examination of plaintiff's witness, H. P. Smith, as follows:

"I am employed by Unit-Built Company, one of the defendants in the case. Mr. Roselyn is the head of that company and handled the Grand Rapids line under a license. His directions to me are to press Grand Rapids equipment in the sales.

"Q. And in connection with those sales, you are unable to compete against local commercial fixture competition in this district; isn't that true?

"Mr. Clark: I object to that as incompetent, irrelevant and immaterial.

"The Court: Sustained.

"Mr. Faulkner: Q. In connection with the work that you do for the Unit-Bilt people you bid, do you not, upon Grand Rapids articles?

"A. We have to quote prices. [1137]

"Q. You also quote prices on the same jobs for the Unit-Bilt people, don't you?

"A. That is true.

"Q. Which is the lower?

"Mr. Clark: Your Honor, we object to that——

"The Court: I don't see the materiality of it. Objection sustained.

"Mr. Faulkner: Well, we offer to prove, your Honor, that the prices of the Unit-Bilt fixtures are constantly lower.

"Mr. Clark: Just a moment. I object to Mr. Faulkner stating what he offers to prove in the presence of the jury.

"The Court: You may proceed.

"Mr. Faulkner: We offer to prove by this testimony that the prices of the Unit-Bilt Company to the same customers where their prices are quoted and the Grand Rapids' are quoted, that the Unit-Bilt prices are constantly lower even when their instruction is to sell Grand Rapids goods.

"The Court: Let the ruling stand."

21. The Court erred in admitting in evidence, over the objection of appellants, Exhibit 177, as follows:

"Thereupon U. S. Exhibit No. 177 was identified as a request sent by the witness to the construction department to cancel the order of Grand Rapids.

"Mr. Clark: We will offer it in evidence.

"Mr. Faulkner: We object to that telegram from Mr. Christenson to his own boss on this subject matter as hearsay as to the defendants.

"The Court: Overruled.

"(The telegram was marked 'U. S. Exhibit No. 177.')

"Mr. Clark: I will read it to the jury, your Honor. [1138]

"The Court: Read it.

"Mr. Clark: 'Oakland, Calif., September 3, 1938.

"'F. R. Hesser—J. C. Penney Co.

"'330 West 34 St. NYK—

"'Union served notice they will not handle Grand Rapids or Webber fixtures for South San Francisco store Vacaville fixtures okay insist fixtures must be made under same conditions wages as Frisco area regardless of union stamp. Consider having orders transferred to Unit Built union contacting me again answer Western Union—

E. M. Christenson.'

22. The Court erred in admitting in evidence, over the objection of the appellants, a conversation with an unidentified person, as follows:

"The notice served by the union that they will not handle Grand Rapids fixtures was at a telephone conversation.

"Mr. Faulkner: I ask that go out.

"The Court: Yes. Who did you have the conversation with?

"A. Who called me? I don't know.

"The Court: Well, tell us all about the conversation.

"Mr. Faulkner: Just a moment. We ob-

ject to a conversation with an unidentified person as hearsay.

"Mr. Clark: We will identify him.

"The Court: Mr. Clark says he will identify the person.

"Mr. Clark: Q. Who did he say he was?

"A: He said he was a friend of the union, or he was speaking for the union and a friend of the Penney Company.

"Q. What did he say?

"Mr. Routzohn: I object; he is not answering the question. [1139]

"The Court: Overruled.

"Mr. Faulkner: A friend of the Penney Company.

"The Court: A member of the union.

"Mr. Faulkner: No, he did not say he was a member——

"The Court: Read the answer of the witness.

(Record read.)

"Mr. Faulkner: We object as hearsay and not binding——

"The Court: Overruled.

"Mr. Clark: Q. So it will be straight all around, what did he say when he talked to you?

"Mr. Faulkner: He already answered it.

"The Court: Overruled.

"He said what is stated in the wire—that is the matter of conditions that existed in the

Bay Area, whereby the union would not set fixtures that did not bear the stamp, and indicated the fixtures should come into the Bay Region under the same conditions and so forth that existed in Frisco. I said, "Well, we had these fixtures coming from Grand Rapids." He said, 'Yes, we know all about that.' 'Those fixtures,' I went on to say, 'have a union label.' 'Yes, we know all about that, but they still would not comply with the regulations that we demand fixtures to be installed under in this area.' Then I asked him about the Vacaville fixtures. He stated they were satisfactory because we owned these fixtures and the conversation ended by him stating he would contact me again."

23. The Court erred in excluding the testimony of defendants' witness, Joseph Louis Emanuel, as follows:

"Mr. Faulkner: Q. In the period from 1936 until 1940, June 26, the date of the return of this indictment, have you ever had any person, whether a union representa- [1140] tive or purporting to be a union representative, or a member of any union group, or of your own group, suggest to you where you should buy any lumber product in any form?

"Mr. Burdell: Object to it as immaterial whether or not this witness has heard that.

"The Court: Sustained."

24. The Court erred in excluding the testimony of defendants' witness, Joseph Louis Emanuel, as follows:

"* * * Do you know, Mr. Emanuel, whether or not in 1935 that was the first occasion that organized labor, after a period of practically fourteen years was able to get a union contract with employers in this district?

"Mr. Burdell: Objected to as immaterial.

"The Court: Sustained.

"Mr. Faulkner: I think it is material to show that organized labor was emerging.

"The Court: I think it is immaterial.

"Mr. Faulkner: Your Honor will not permit me to——

"The Court: No. I do not wish to consume too much time in listening to argument. I would like to have you put in the evidence as rapidly as possible.

"Mr. Faulkner: Don't you think that it is important in this case to show that there was a definite change?

"The Court: I think that my ruling is correct and it stands. Proceed with the examination."

25. The Court erred in excluding the testimony of defendants' witness, W. P. Kelly, as follows:

"We obtained separate agreements from many of the cabinet shops who were not represented by Mr. Emnes.

"Q. Yes. Have you those contracts?

"A. I have no doubt that they are on file in the Local Unions, or in the [1141] District Council.

"Mr. Carson, H: They have been brought in for identification but they have not been separated.

"The Court: Well, I think it is immaterial, anyhow; you are wasting time in producing them, gentlemen. If you wish to make a formal offer of them I will make a ruling now.

"Mr. Routzohn: Q. Can you tell us about how many there were that you obtained, contracts from people other than those represented by Mr. Ennes?

"Mr. Burdell: I object as immaterial and no foundation, and calls for his conclusions.

"The Court: I think he said no.

"The Witness: No, I did not say anything.

"The Court: Objection is sustained.

"Mr. Routzohn: We would like at this time, if your Honor please, to make a proffer of all the contracts that we brought in here at the instance of the Government.

"The Court: Well, produce them; find them and produce them.

"Mr. Routzohn: If I can prevail on the Clerk, here, to do that, your Honor, please.

"The Court: Well, I think you ought to assist the Clerk in doing that if you know what they are. Make the offer some other time.

"Mr. Routzohn: All right, sir. We can do that before this witness leaves.

"Q. Is that also true in the 1936 contract, that you obtained contracts from others than those represented by Mr. Ennes?

"A. Yes.

"Mr. Burdell: I ask the answer be stricken and I will also interpose the same objection. [1142]

"The Court: The answer may go out. Objection sustained.

"Mr. Routzohn: Q. The same question as to the Mill Owners represented by Mr. Edwards and Mr. Gaetjen, that is, the other Mill Owners, whoever they were, over here on this side of the Bay, did you obtain contracts with other mill owners that were not represented by them?

"Mr. Burdell: The same objection.

"The Court: Sustained.

"Mr. Routzohn: Now, if your Honor please, at some other time we would like to make that offer.

"The Court: Very well." * * *

"Q. I show you here some exhibits that have been produced. I am not going to introduce the exhibits, your Honor, but I would ask Mr. Kelly if he would indicate the firms that were unionized in 1938, with contracts identical with the ones here in evidence. The firms are on the top of each one of these.

"Mr. Burdell: Do you mind if I look at them a minute?

"Mr. Faulkner: No.

"A. Atlas Stair-Building Company, that was one signed Augut 15, 1938.

"Q. Signed what date?

"A. August 15, 1938.

"Mr. Burdell: Do you have a list of those?

"Mr. Faulkner: They have been in and out of our possession, but they came in here at the trial.

"The Court: Why don't you make a list of them and you can save time.

"Mr. Faulkner: Suppose I read them off. There are really not very many.

"The Court: Very well, read off the names.

"Mr. Burdell: I am going to object to it, because I [1143] do not see any materiality, and I do not see any foundation laid.

"Mr. Faulkner: These came out of the Union's possession. They are original contracts, aren't they, Mr. Kelly?

"Mr. Burdell: I take it these will show these companies were unionized in 1938, but is there anything to show they were not unionized before?

"Mr. Faulkner: They may have had a contract before.

"Mr. Routzohn: Some of them did not get in until 1940.

"The Court: I cannot see that they are material. I asked you before to make a list of them and you can make your offer and I will rule upon it.

"Mr. Faulkner: I will read the names off, it will only take a short time. * * *

"Thereupon, the names of some forty firms with 1938 contracts were read.

"The Court: Are any of those firms whose names you have read corporations, partnerships, or individuals, defendants in this case now on trial?

"Mr. Burdell: One is, your Honor, possibly two that I know of. The Brannan Street Planing Mill and Eureka Sash, Door & Molding Company.

"The Witness: That is a different Eureka mill.

"The Court: Those are separate contracts made by the unions with persons who are in no way involved in the trial now before the Court?

"Mr. Faulkner: Yes, except that they signed the identical contract.

"The Court: Yes.

"Mr. Faulkner: And the testimony is offered for the purpose of showing that at the time, in conformity with [1144] the position taken by the respective sides, that paragraph 8 of the Arbitration Award, paragraph 2 of the Agreement, was to provide a condition of unionization of plants in this area. In other words, there was an attempt to unionize, and the only distinction between the contracts they ultimately entered into and the contract ac-

tually entered into, I would like to read into the record, it is only a line.

"The Court: Read it.

"Mr. Faulkner: 'Agreement for the purpose of promoting the mutual interest of the parties signatory hereto between (blank), that is, between the various people whose names I have read and the Bay Counties District Council of Carpenters as follows:

"'The wages, hours and working conditions of the Cabinet Makers, Carpenters and Millmen employed by the different firms by whom the agrement was signed—will be as stipulated in the agreements between the District Council of Carpenters, Millmen's Unions No. 42 and 550 and the Lumber Products Association, Inc. and the Cabinet Manufacturers Institute, Inc., Northern Division, which is as follows'—

"and then the Exhibit 132——

"The Court: Are you going to read any more of that?

"Mr. Faulkner: No. In other words, Exhibit 132 is mimeographed and became a part of every agreement with these people.

"Mr. Burdell: I desire to move to strike everything that Mr. Faulkner has read, because it does not prove what he wants to prove it is immaterial.

"The Court: I think it is immaterial, it may go out. Do I understand you are going to offer these in evidence? [1145]

"Mr. Faulkner: No, I have completed my proof, I think it is relevant in this case. The Government says that paragraph operated to provide for a certain situation, and here are constant attempts to unionize other people. The position we have taken is that that paragraph had to do with the local condition where competitors of these people would be paying a different rate, and as long as that competition existed it is evidence by itself that these people were not unionized. I think it is within the issues of the case.

"The Court: Have you any motion that you wish to make?

"Mr. Burdell: Yes, I move to strike the whole thing on the ground it is immaterial, irrelevant, and incompetent, and no foundation laid, assuming facts in evidence and not within the issues of this case.

"The Court: The motion is granted. * * *

"Mr. Faulkner: Your Honor, at the time of the noon recess, Mr. Burdell had made an objection which your Honor sustained. In connection with that objection, one of the grounds stated was that a proper foundation had not been laid in identifying these papers. I don't want to pursue the matter any further in the light of the Court's ruling, but that would be a sound objection—in other words, I had not completed the identification of the documents. If Mr. Burdell will withdraw that and the rec-

ord will clearly show your Honor's ruling was based on the materiality, I won't have to devote any more time to it. I think that was your Honor's position, was it not?

"The Court: Yes.

"Mr. Faulkner: Will you withdraw that ground of your objection? [1146]

"Mr. Burdell: Well, my objection is based on the fact it is not material and also that no foundation as to materiality has been laid.

"Mr. Faulkner: Well, you did not mean that was not any foundation that these were original agreements that were entered into on the day they bore date?

"Mr. Burdell: No, that is not part of my objection.

"Mr. Faulkner: I think that clears it up.

"The Court: Yes."

26. The Court erred in excluding the testimony of defendants' witness, Emil H. Ovenberg, as follows:

"Q. Now, the 1936 agreement, then, resulted in an increase in the wage scale, did it not, to the employees? A. It did, yes.

"Q. What was the movement of living conditions at the same time?

"Mr. Howland: I object to that, if your Honor please, on the ground it is irrelevant and immaterial, and having nothing to do with the issues in this case.

"The Court: Sustained.

"Mr. Howard: If your Honor please, if I may have the privilege of this suggestion relative to the indictment, there is a charge here that there was some question of gift in the making of the scale. I think that we are entitled to all of the facts bearing on the question of how that scale was fixed."

27. The Court erred in excluding the testimony of defendants' witness, Emil H. Ovenberg, as follows:

"Q. What is the scale for Millmen in Fresno? A. $9 a day.

"Q. What is the scale in Vallejo?

"A. $10.

"Mr. Burdell: I object to that and ask that it go out. [1147]

"The Court: Yes, it may go out. Objection sustained.

"Mr. Howard: If your Honor please, we will make an offer of proof, then, to include Stockton and Los Angeles, to show that the scale of Millmen at the present time is greater in all of those localities than here.

"The Court: The offer of proof has been made.

"Mr. Burdell: We object to the offer of proof on the ground that the wages and standards of living in localities other than the Bay Area are utterly immaterial and irrelevant.

"The Court: Sustained.

28. The Court erred in excluding the testimony of defendants' witness, Emil H. Ovenberg, as follows:

"Mr. Howard: Q. What is the existing Carpenters' wage scale? A. $11 a day.

"Mr. Burdell: We object to that.

"The Court: Yes, that may go out. Objection sustained."

29. The Court erred in excluding the testimony of defendants' witness, Emil H. Ovenberg, as follows:

"Mr. Howard: Q. Are lumber handlers a part of your craft?

A. They belong to the same Brotherhood, they are members of the United Brotherhood of Carpenters and Joiners of America.

"Q. Are they skilled or unskilled workmen?

"Mr. Burdell: I object to that on the ground it is immaterial, irrelevant, and incompetent.

"The Court: Sustained.

"Mr. Howard: Q. Do you know the scale prevailing at the present time for lumber handlers in this locality?

"Mr. Burdell: I object to that on the ground it is irrelevant and immaterial to any issue in this case. [1148]

"The Court: Sustained."

30. The Court erred in excluding the testimony of defendants' witness, Emil H. Ovenberg, as follows:

"Q. Now, with reference to all your activities as a negotiator, or as a representative of your organization, or as an individual, were you acting with the intent to promote the interests of yourself and your organization?

"A. Sincerely and honestly——

"Mr. Burdell: I object to that and ask that the answer go out.

"The Court: Yes, it may go out.

"Mr. Burdell: I object to it as calling for the opinion and conclusion of the witness, and immaterial, irrelevant to any issue in this case.

"The Court: Sustained.

"Mr. Howard: If I may call to your Honor's attention, I believe that the question of intent is vital here, and exceedingly material. Your Honor will bear in mind paragraph 29 of the indictment, which has a direct bearing on this issue, in which the charge is made that these men were not intending to promote their own interest, or with an intent of promoting the objective of labor. I have cases here, your Honor.

"The Court: I have cases here, too. The ruling will stand.

"Mr. Howard: May I, in order that there be no question about the form of the question, then, make this offer of proof, that we offer to prove by this witness, who is a union negotiator or representative of the union in connection with the negotiation of the disputes with em-

ployers in the period of 1936 and again in 1938, that he intended only to act in promotion of his union de- [1149] mands and objectives. I wish to make that as an offer of proof.

"The Court: Any objection?

"Mr. Burdell: Yes, we object to that as having no probative value at all, any question of intent is immaterial to this case, and further the intent which is included in this offer is not consistent with any such intent as may be necessary to sustain the allegations of the indictment.

"The Court: Objection sustained.

"Mr. Faulkner: Your Honor is not ruling intent and motive does not enter into a conspiracy charge?

"The Court: Absolutely, that is what I am ruling, in a conspiracy charge.

"Mr. Faulkner: That intent does not enter into it?

"The Court: The intent is immaterial here at this time. That is what I am ruling.

"Mr. Faulkner: Very well."

31. The Court erred in excluding the testimony of defendants' witness, David H. Ryan, as follows:

"I pointed out to Mr. Williams that Walter Jacoby was there doing some work, and he said he was going to install Grand Rapids Fixtures, and we did not like Walter Jacoby, who had a habit of getting laborers and give them

a pair of overalls and some tools and get him on the job and do the work of a carpenter.

"Mr. Clark: I object to that.

"Mr. Routzohn: I think that is very important.

"The Court: I don't think it is.

"Mr. Routzohn: I suppose I should show, if your Honor please, that Mr. Jacoby had not been employing union labor. [1150]

"The Court: It is unimportant whether he did or not. I do not see that it has anything to do with the issues here, at all.

"Mr. Routzohn: I would like to make that proffer, that Mr. Jacoby was not——

"The Court: If you wish to ask the question you can.

"Mr. Routzohn: Q. Was it your objection that Mr. Jacoby, who was there for the Walter Manufacturing Company, did not comply with the labor conditions that were set forth in your contract?

"Mr. Clark: I object to that on the ground it is immaterial, irrelevant, and incompetent, and also leading.

"The Court: Sustained.

"Mr. Routzohn: Q. Tell us what you said relative to Mr. Jacoby?

"A. I told Mr. Williams that there were non-union men working in the basement of Roos Bros.——

"Mr. Clark: We move to strike that out as irrelevant.

"The Court: It seems to me it is immaterial here. I think you are going very far afield. It may go out."

32. The Court erred in sustaining plaintiff's objection and refusing to admit in evidence the letter dated August 11, 1939, addressed to Mayor Rossi by Mr. Ryan, Secretary of Bay Counties District Council of Carpenters, being Government's Exhibit 115-30 for identification and offered in evidence by defendants as follows:

"Government's Exhibit 115-30 for identification is a letter dated August 11, 1939, addressed to Mayor Rossi, written by the Bay Counties District Council of Carpenters.

"Mr. Routzohn: Do you wish to see this, Gentlemen?

"The Court: I suppose it is along the same line, is it? [1151]

"Mr. Routzohn: On similar, but I think a little bit more comprehensive in its language, and I would like to read it into the record, if your Honor please.

"The Court: If it is along the same line I cannot see any necessity for it.

"Mr. Routzohn: It is just a little bit more comprehensive in its scope.

"Mr. Clark: We would like to object again as immaterial. We are not objecting to Mr. Ryan's efforts on this job, what we are objecting to is the combination that he entered into to keep these people from bringing in mate-

rial and its being installed. That is entirely immaterial to the Government's case.

"The Court: You can make the offer. I think you have gone far enough. Make the offer.

"Mr. Routzohn: My only purpose in all of this is to explain the gentlemen's duties.

"The Court: He has explained that quite fully already.

"Mr. Routzohn: We wish to offer the letter, addressed by Mr. Ryan, Secretary of the Bay Counties District Council of Carpenters, dated August 11, 1939, which is marked for identification Government's Exhibit 115-30.

The full substance of the evidence rejected is as follows:

"Bay Counties District Council of Carpenters
(Letterhead)
San Francisco, California

August 11, 1939.

"The Honorable Angelo J. Rossi,
Mayor of the City of San Francisco,
City Hall,
San Francisco, California. [1152]

"Dear Sir:

"In relation to the construction of municipal projects in the City and County of San Francisco with special reference to the undisputed desirability of allocating to local manufacturing plants and local labor, the largest possible amount of the work in connection with

such projects, may the undersigned respectfully suggest steps that could be taken by the officials and awarding officers of the City and County of San Francisco, in the exercise of their authority, that would retain for local plants and local labor, practically all of such work.

"From the time a project is authorized and until the general contract for it is awarded and signed, there are three points we wish to refer to you:

"1. At the time the architect is selected to draw up the plans and specifications, we suggest that it be impressed upon his mind that within reasonable limits, the cost of any item or classification of material, supplies, or equipment is not as important as is the question of whether or not it is bought and fabricated in the City and County of San Francisco.

"We suggest that the millions of dollars in bond issues that the property owners and tax payers have met and still have to meet to relieve unemployment, makes it absolutely foolish to have equipment and fabricated materials manufactured outside of San Francisco in order to save a few dollars on the contract price, when such a practice keeps local plants idle, keeps local labor on the streets and adds $10 to the burden of San Francisco in meeting unemployment expenses for every one dollar saved on the contract price.

"2. We suggest also, that when the complete plans and specifications are before the awarding officers for [1153] approval that representatives of local firms and local labor be given an opportunity in the presence of the architect and awarding officers to learn in what particular part of the work the architect has specified some material or item of equipment made outside of San Francisco "or its equal", and being informed what special advantage lies in such a stipulation that makes it paramount to local manufactured equipment.

"3. We suggest in conclusion, that when the plans and specifications are ready for delivery to the prospective bidders that a time and place be set when they will be made available and that again in the presence of the awarding officers, representatives of local firms and local labor, the desirability of having all subcontracts awarded to local firms be opened to discussion in an endeavor to reach an agreement with the prospective bidders to confine their sub-contracts to local firms.

"Sincerely yours,

D. H. RYAN, Secretary,

"Bay Counties District Council of Carpenters."

DHR:m

33. The Court erred in sustaining plaintiff's objection and refusing to admit in evidence pamphlet entitled "Argument for Charter Amendment", being defendants' Exhibit V for identification and offered in evidence by defendants, as follows:

"Mr. Routzohn: I first wish to offer in that connection a pamphlet entitled "Argument for Charter Amendment," and on page 5 of the pamphlet, entitled "Help Your City"——

"Mr. Clark: I object to your reading that.

[1154]

"Mr. Routzohn: That is the only way I can identify it.

"Mr. Clark: He can identify it and say he has offered Defendants' Exhibit For Identification. He might otherwise as well introduce it in evidence.

"The Court: Have you finished with your offer?

"Mr. Routzohn: Yes, that portion.

"The Court: Is there an objection by the Government?

"Mr. Clark: Yes.

"The Court: What is the objection?

"Mr. Clark: Objected to as immaterial to any issue in this case.

"The Court: Sustained.

"(The document was marked 'Defendants' Exhibit V for Identification)."

The full substance of the evidence rejected is as follows:

Argument on Charter Amendment
Help Your City

Vote "Yes" on Charter Amendment No. 6.

It provides for a preferential in behalf of San Francisco taxpayers doing business with San Francisco.

It will encourage home industry in the same way every other city and county in the State does.

It will give people of San Francisco full benefit of $20,000,000.00 P. W. A. bonds voted by the people to provide work and trade for people of San Francisco.

Many of the benefits of P. W. A. are going to people of other communities.

The amendment would give ten per cent preferential to San Francisco bidders on P. W. A.

The amendment is proposed jointly by business and labor organizations. [1155]

For example the Glen Park school is now being built and all millwork is being done in a distant city because local planing mills were $211.00 higher in bid than outside planing mills.

$32,000.00 worth of fire hydrants have been let to a plant in Los Angeles whose bid was $411.00 less than a San Francisco firm.

Committees representing the San Francisco Chamber of Commerce San Francisco Labor Council and San Francisco Junior Chamber of

Commerce made every effort to retain such business but had to give up because the present charter makes it irregular to give preference to home industry.

In other cities San Francisco firms are often thrown out because outside the county taking the bid and San Francisco firms have given up on bidding on public work to be done less than ten miles from this city.

Working men, tax payers and manufacturers of San Francisco voted to spend millions of dollars to stimulate local business and give employment to local people. Because of the charter such millions must be spent to stimulate business and promote employment in other communities.

Charter Amendment No. 6 remedies this by giving a ten per cent preferential in behalf of local industry.

34. The Court erred in sustaining plaintiff's objection and refusing to admit in evidence San Francisco Charter Amendment No. 6, entitled "Preference for Local Labor and Industry", being defendants' Exhibit W for identification, and offered in evidence as follows:

"The Court: Do you wish to offer some amendment to the Charter?

"Mr. Routzohn: Yes, the Charter Amendment No. 6, [1156] entitled "Preference for Local Labor and Industry." I think it has a material bearing on this case.

ter of the City and County of San Francisco, pages 56 and 57, defendants' Exhibit X for Identification, and offered in evidence, as follows:

"Mr. Routzohn: We are also offering it in evidence. I also wish to offer in evidence along the same lines, your Honor, the charter of the City and County of San Francisco at pages 56 and 57.

"Mr. Clark: We object to that as immaterial, your Honor.

"The Court: Sustained.

"(The documents was marked "Defendants' Exhibit X for Identification.") [1158]

"Mr. Routzohn: I would like to have a stipulation that the proper foundation has been laid for offering these exhibits in evidence.

"The Court: Yes.

"Mr. Routzohn: Can we have that stipulation so that there will be no question about what the offer is?

"Mr. Clark: We object to the materiality of it.

"The Court: There can be no question, I take it, that the proper foundation has been laid.

"Mr. Clark: We are not objecting to it for lack of foundation.

"Mr. Routzohn: You have no objection along that line, your objection is merely to the materiality of it?

"Mr. Clark: Materiality of it."

The full substance of the evidence rejected is the same as Section 98 of the Charter hereinbefore set forth and contained in Assignment No. 34, and by this reference such evidence is incorporated herein. That in addition the following was contained:

"Ratified by the Legislature, May 17, 1935."

36. The Court erred in excluding the testimony of defendants' witness, David H. Ryan, as follows:

"Mr. Routzohn: Q. Now, Mr. Ryan, from 1935 on, 1936, 1937, 1938, 1939, 1940 and 1941 up to the present time, have you had a continuous labor dispute with the C. I. O. in your organization?

"Mr. Clark: We object, first, as immaterial; second, as calling for the opinion and conclusion of the witness.

"The Court: The objection is sustained.

"Mr. Routzohn: I want to prove there has been a labor dispute here, not only with these men, but with a dual organization.

"The Court: The objection is sustained."

[1159]

37. The Court erred in excluding the testimony of defendants' witness, David H. Ryan, as follows:

"Q. In all of the negotiations that you have had with employers, ranging from 1935 on up to the present time, I will ask you whether or not there has ever been in your mind an intent or purpose to restrain interstate commerce.

"Mr. Clark: We object to the intent and purpose of this witness as immaterial to any issue in the case.

"The Court: Sustained."

38. The Court erred in excluding the testimony of defendants' witness, Charles Helbing, as follows:

"Mr. Howard: Q. Were you acting with intent then in any way than to carry on your objects of labor and the acquisition of proper working conditions in your activities here?

"Mr. Howland: Objected to on the ground that intent is immaterial.

"The Court: Sustained.

"Mr. Howard: I presume it is not necessary to offer that same offer of proof, your Honor, in regard to the other testimony, for example, an offer of testimony that might be offered here relating to this objection?

"The Court: I do not know what you are referring to.

"Mr. Howard: If your Honor will recall, I was somewhat troubled in connection with this line of testimony on the previous occasion that there might be the same objection, and I made an offer of proof with respect to the intent with which these men were acting.

"The Court: I think the intent is immaterial.

"Mr. Howland: We have an understanding that it is not necessary to offer this same thing through each witness. [1160]

"The Court: I do not know; I hardly think so.

"Mr. Howard: Your Honor's ruling would be the same?

"The Court: Yes.

"Mr. Howard: That is all."

39. The Court erred in excluding the testimony of defendants' witness, Walter C. O'Leary, as follows:

"Q. Do you know whether the Aladdin Company was union or non-union?

"Mr. Zirpoli: We object to that.

"The Court: Sustained."

40. The Court erred in excluding the testimony of defendants' witness, Kenneth Davis, concerning the affiliation of certain firms in the Northwest with defendant, United Brotherhood of Carpenters and Joiners of America and their right to use its label and in sustaining the objection to defendants' offer of proof through such witness, as follows:

"Q. I call your attention, Mr. Davis, to the McCleary Timber Company which has been previously testified about in this case, the testimony appears in transcript No. 4 at page 320, and ask you if you know whether or not during the period from 1936 to 1940 that company was organized by the United Brotherhood of Carpenters and had the right to use the label of the United Brotherhood of Carpenters on its woodwork and material.

"Mr. Zirpoli: I object. This is immaterial and irrelevant and not within the issues of the case.

"The Court: Sustained.

"Mr. Carson, II: I would like to make an offer of proof in this connection.

"The Court: Yes.

"Mr. Carson, II: The testimony of this witness will show that the McCleary Timber Company, the Weyerhaeuser [1161] Lumber Company, the Long-Bell Lumber Company, the Central Door and Lumber Company of Portland, Oregon, the Central Door and Plywood Company of Albany, the G. D. Johnson Company, the Robinson Manufacturing Company at Everett, Washington, the Ewauna Box Company at Klamath Falls and the Algoma Lumber Company at Algoma, Oregon, from the period 1936 to the period of 1940 were not organized by the United Brotherhood of Carpenters, were not working under a contract with any local union, or affiliated organization of the United Brotherhood of Carpenters, did not possess the right to use the union label, and none of their products with the exception of the doors of the Central Door and Lumber Company possessed the union label.

"Mr. Zirpoli: I make the same objection, your Honor; it is immaterial and irrelevant and not within the issues of this case.

"Mr. Routzohn: Your Honor please, I am

not certain that the full import of this testimony is being considered at this time.

"The Court: I understand it fully. If you wish to add anything to the offer that has been made by Mr. Carson, you may.

"Mr. Rontzohn: Merely a statement as to the purpose, your Honor.

"The Court: I don't care to hear anything further. I think Mr. Carson has made it quite clear. The objection will be sustained."

41. The Court erred in excluding the testimony of defendants' witness, Kenneth Davis, concerning the organization of the lumber and sawmills in the States of Washington and Oregon by the A. E. of L. and C. I. O. during the years 1935 to 1940, inclusive, and in sustaining the objection to defendants' offer of proof through such witness, as follows: [1162]

"Mr. Carson, II: Q. Mr. Davis, are you acquainted with the facts concerning the organization of the lumber and sawmills located in Oregon and Washington during the year of 1933? A. I am.

"Mr. Zirpoli: I make the same objection, your Honor; immaterial and irrelevant.

"The Court: Yes. The answer may go out. The objection is sustained.

"Mr. Carson, II: Q. Are you acquainted with the facts surrounding the organization of the lumber and saw mills in Washington and Oregon in the year 1934? A. I am.

"Mr. Zirpoli: Same objection.

"The Court: The answer will go out.

"Mr. Zirpoli: Immaterial and irrelevant.

"The Court: The objection is sustained.

"Please don't answer until I have an opportunity, witness, to hear the objection, and an opportunity to rule.

"Mr. Carson, II: Without repeating the question, but the same facts as to 1935, 1936, 1937, 1938, 1939 and 1940.

"Mr. Zirpoli: I interpose the same objection, your Honor.

"The Court: Sustained.

"Mr. Carson, II: May it please the Court, we offer this testimony and this witness' testimony will show, in the year 1933 the mills in the Northwest, the lumber and saw mills in the States of Washington and Oregon were independent organizations and not affiliated with either the A. F. of L. or the C. I. O.; that their wages at that time were from 19 to 28 cents per hour; that in the year 1934 those organizations under the NRA affiliated with the A. F. of L. and received Federal charters, at which time their wages were advanced to the minimum wage of 40 cents per [1163] hour; that in the year 1935 they became affiliated with the United Brotherhood of Carpenters and received non-benficial charters, at which time their minimum wages were increased to 50 cents per hour; that during the year 1940 they asked for recognition in the United Brotherhood of Carpenters under the classification of

semi-beneficial locals; upon the recommendation of the president, general president Hutcheson, they were accepted into the organization and their charters were issued on a semi-beneficial class with the semi-beneficial benefits as set out in the constitution of the United Brotherhood of Carpenters and Joiners which is in evidence in this case; that in the year 1935 when they first affiliated with the United Brotherhood of Carpenters; they had approximately 1,900 members, and by 1937 their membership had increased to 35,000 members; that in the year 1937 certain industrial warfare occurred in the States of Washington and Oregon, resulting in splitting up that union by the CIO in that territory, which left approximately 20,000 members in the United Brotherhood of Carpenters and approximately 15,000 went over to the CIO; that in the year 1940 these organizations were all back into the United Brotherhood of Carpenters and had increased their membership to 50,000; that the testimony of this witness will establish that the organization's efforts, that the contracts and efforts on the part of the locals and the District Council in the Bay Counties area was directly allied and a part of the organization's efforts of the United Brotherhood of Carpenters in the Northwest and is interalfied with that organization and with the efforts to stop the inroads of the CIO.

"Mr. Zirpoli: All of which testimony, I submit, is [1164] immaterial and irrelevant.

"The Court: Do you wish to add anything?

"Mr. Routzohn: I think it is quite material, your Honor, for us to show——

"The Court: Please, Judge, I don't wish to hear any argument. The objection is sustained.

"Mr. Routzohn: All right, sir.

"The Court: I am sorry; but I don't wish to hear any argument."

42. The Court erred in sustaining plaintiff's objection and refusing to admit in evidence circular letter, defendants' Exhibit 2-M for identification, and in sustaining objection to and striking out the testimony of the witness, Joseph I. Cambiano, as a foundation for admission of such exhibit, as follows:

"I attended the twenty-third General Convention of the United Brotherhood held in Lakeland, Florida, in December, 1935.

"Q. I will ask you whether or not at that time any action was taken relative to the CIO activities in this territory in interfering with the United Brotherhood unions and endeavoring to organize the planing mills in this district.

"Mr. Clark: Your Honor, we will object to any activities of the CIO, being outside any issue in this case.

"The Court: Sustained.

"Thereupon the jury was excused for the purpose of proffering certain documents in evidence.

"The following proceedings occurred:

"The Court: My suggestion is, you may make your offer, Judge Routzohn. I have read the document and I think I remember what it contains. You may make your offer for the record, and I will rule. [1165]

"Mr. Routzohn: I desire, however, your Honor please, to lay the foundation for the introduction of the letter, unless there can be a stipulation at this time.

"The Court: Well, you may do that if you wish.

"Mr. Routzohn: Q. Mr. Cambiano, I hand you what purports to be a circular letter of date August 11, 1937, entitled Special Circular from General Executive Board sent by the General Executive Board of the United Brotherhood of Carpenters and Joiners of America, William L. Hutcheson, Chairman, and Frank Duffy, Secretary, and ask you to state to the Court just what that paper is.

"A. A circular sent out by the United Brotherhood of Carpenters——

"Mr. Routzohn: No, no. It is a circular letter?

"A. A letter to local unions throughout the United States and Canada.

"Q. By 'Local unions' you refer to local unions, of course, of the United Brotherhood?

"A. Local unions, district councils, State councils and what not.

"Q. You said you were at the convention at the time it was taken up?

"A. That's right.

"Q. At that time was there a dual organization known as the CIO, or Committee of Industrial Organizations, that was making any organization efforts and inroads on the locals?

"A. There was.

"Q. Of the United Brotherhood of Carpenters and Joiners of America?

"A. There was.

"Q. Was that true in this District as well as other districts throughout the Pacific Coast?

"A. Yes.

"Q. Including Washington and Oregon?

"A. Yes.

"Q. From 1936 on, has there been a constant and continuous organizing effort opposed to the organization efforts of the Brotherhood presented by the CIO organization?

"A. There has been. [1166]

"Mr. Clark: Your Honor, we will object and ask the answer go out.

"The Court: The answer may go out. What is the objection?

"Mr. Clark: Objected to as irrelevant and immaterial to any issue in this case.

"The Court: Sustained.

"Mr. Clark: I move to strike out the other answers. I thought he was laying a foundation to introduce this circular.

"The Court: I thought so, too.

"Mr. Clark: We move to strike it out.

"Mr. Routzohn: That was my purpose. I was trying to make it doubly sure we were getting the proper foundation.

"At this time, your Honor please, we wish to introduce into evidence—let us have that marked for identification—introduce in evidence this circular letter which has been marked for identification Defendants' Exhibit 2-M.

"Mr. Clark: We object, your Honor, on the ground, first, that it doesn't meet the case in chief; second, that it is self-serving; and, third, it is immaterial and irrelevant to any issue involved in this case. . .

"The Court: Objection sustained.

"(The circular letter was marked 'Defendants' Exhibit 2-M for Identification.)"

The full substance of the evidence rejected is as follows:

"UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

August 11, 1937.

SPECIAL CIRCULAR FORM
GENERAL EXECUTIVE BOARD [1167]

To the Officers and Members of all Local Unions and District, State and Provincial Councils of the United Brotherhood of Car-

"The Court: Is there any objection?

"Mr. Clark: Yes, your Honor, immaterial.

"The Court: Sustained.

"(The document was marked "Defendants' Exhibit W for Identification.')"

The full substance of the evidence rejected is as follows:

"Charter Amendment No. 6."

Proposal to amend Section 98 of the Charter of the City and County of San Francisco submitted by the Board of Supervisors to provide for the allowance of a preference not to exceed ten per cent in favor of articles to be used on public works and improvements, which articles are manufactured, fabricated or assembled within San Francisco as against similar articles from elsewhere.

"Contractors' Working Conditions."

Section 98. Every contract for public work or improvements must provide that in the performance eight hours per calendar day shall be maximum hours of labor, labor shall be paid not less than the highest general rate of wages in private employment for similar work, any laborer must be a citizen of the United States and on contracts within the limits of the City and County must have been a resident of the City and County for one year next preceding his engagement to perform the labor thereunder; the residence requirement being subject

to waiver by the awarding officer under certain circumstances and conditions.

The term "public work" or "improvement" includes fabrication, manufacturing or assembling of materials, [1157] when the materials are of unique or special design, or are made according to plans and specifications for the particular work or improvement.

The Board of Supervisors shall have full power and authority to enact all necessary ordinances to carry out the terms of this section and may by ordinance provide that in any contract for any public work or improvement, or for the purchases of materials which are to be manufactured, fabricated or assembled, a preference in price not to exceed ten per cent shall be allowed in favor of such materials as are to be manufactured, fabricated or assembled within San Francisco as against similar materials manufactured, fabricated or assembled elsewhere. May provide that a subcontractor is entitled to the same preferential as original contractors. Any awarding officer, board or commission, when ordinance shall so provide, may in determining the lowest responsible bidder add to said bid or sub-bid an amount sufficient, not exceeding ten per cent, to give preference to materials manufactured, fabricated or assembled within San Francisco.

35. The Court erred in sustaining plaintiff's objection and refusing to admit in evidence Char-

penters and Joiners of America. Greetings:

Acting on instructions of our 23rd General Convention held in Lakeland, Florida, December, 1936, a sub-committee of the General Executive Board visited the lumber and saw mill operations in the Northwest. While there, meetings were held with representatives of our District Councils of the Western States, as well as operators who employ our members. The committee endeavored to get first hand information as to the past manner of handling organization of this branch of our industry, so as to secure the best possible results for men working in the woodworking industry as to working conditions and the proper relationship of men in our organization.

It found communistic and adverse influences boring from within to destroy the activities of the United Brotherhood and building up of a dual International Union of Woodworkers, opposed to the United Brotherhood, but before the sub-committee reported its findings and recommendations to the General Executive Board the C.I.O. had already issued a charter, or certificate of affiliation to a dual organization called "International Woodworkers of America."

This dual organization is already trying to induce our local unions and members to secede from the United Brotherhood and to combat this dual movement it is necessary to notify

all local unions, district, state and provincial councils that our members must not handle any lumber or millwork manufactured by any operator who [1168] employs C.I.O. or those who hold membership in an organization dual to our Brotherhood.

Do not be misled by newspaper articles that the entire lumber and sawmill industry has gone C.I.O. Just the opposite is the truth. We have thousands and thousands of loyal members in the Northwest who are battling for the United Brotherhood and will continue to do so, and it makes it absolutely necessary for all members to give them their support by refusing to handle materials coming from C.I.O. operations.

The C.I.O. has challenged us, and we must meet that challenge without hesitation. Therefore, you are instructed to appoint a committee to inform your employees and the lumber dealers that our members will refuse to handle any dual or C.I.O. products.

A list of operations using this class of labor will be sent from time to time as the situation develops, but appoint a committee at once so employers will be informed in plenty of time to protect themselves before placing orders for lumber or millwork. Kindly comply with the instructions at once and inform the General President of the names and addresses of the committee so proper information can be sent

direct to them as well as to you, to secure quick action.

Let your watchword be "No C.I.O. lumber or millwork in your district", and let them know you mean it.

Fraternally yours,
GENERAL EXECUTIVE BOARD
William L. Hutcheson
Chairman.
Frank Duffy
Secretary." [1169]

43. The Court erred in sustaining plaintiff's objection and refusing to admit in evidence defendants' Exhibit 2-N for identification, as follows:

"Mr. Routzohn: Q. I hand you a paper writing of date August 21, 1939, which has been marked for identification Defendants' Exhibit 2-N, and ask you to state to the Court just what that paper is.

"A. This here is the agreement sent out by the Congress of the Industrial Organizations from Washington, D. C., a letter to all of the contractors in California.

"Mr. Routzohn: I would like to have your Honor see this.

"The Court: Yes.

"Mr. Routzohn: That agreement is sent by whom and in what capacity?

"The Court: This is headed "For Release Morning Papers Wednesday, July 26, 1939."

"Mr. Routzohn: Attached to that, your Honor, is——

"The Court: "Rules and Regulations of the United Construction Workers Organizing Committee" is attached to the newspaper release.

"Mr. Routzohn: Yes, the proposed agreement.

"The Court: Did you see it?

"Mr. Clark: I just saw the front page.

"The Court: Have you an objection?

"Mr. Clark: I thought it was a newspaper release.

"Mr. Routzohn: That is signed by A. D. Lewis. A. That's right.

"Q. Who is A. D. Lewis?

"A. A brother of John L. Lewis.

"Q. What is his position?

"A. President——

"Q. A. D. Lewis, Denny Lewis.

"A. He is supposed to be president of the construction department of the CIO. [1170].

"Q. The construction department of the CIO, how does that compare with the organization of the United Brotherhood of Carpenters and Joiners of America?

"Mr. Clark: We object to this line of questioning as immaterial and irrelevant to this case, as to any comparison between a setup of the CIO and the AF of L.

"The Court: Sustained.

"Mr. Routzohn: Q. Is it or is it not a dual organization to your own organizations that are defendants in this case?

"A. Positively——

"Mr. Clark: We object to that, your Honor, and move the answer go out. Object to it as immaterial and irrelevant.

"The Court: It may go out. Objection sustained. Has it been marked?

"Mr. Routzohn: I wish to offer this in evidence, as well as Exhibit 2-M

"Mr. Clark: We object to 2-N on the ground it is immaterial and irrelevant and appearing, the first part of it, in a newspaper release and the other, the rules and regulations of the CIO, which is not a party in this case, not involved here, does not meet the issues in the case.

"The Court: Sustained.

"Mr. Routzohn: Q. Well, those rules and regulations were a part of the organization efforts of the CIO, were they?

"A. That's right.

"Mr. Clark: We object to that and move it go out. Object as immaterial and irrelevant.

"The Court: The answer will go out. Objection sustained."

The full substance of the evidence rejected is as follows: [1171]

CONGRESS OF INDUSTRIAL ORGANIZATION.

1106 Connecticut Avenue, N. W.,
Washington, D. C. August 21, 1939.
District 3582.

For Release morning papers, Wednesday, July 26, 1939.

President John L. Lewis of the Congress of Industrial Organization today announced formation of United Construction Workers Organization Committee, for the purpose of organizing the workers in the construction industry.

The new CIO committee is under chairman A. D. Lewis.

Headquarters will be opened August 1, in Washington, D. C.

In announcing the formation of the committee President Lewis declared there was 3,000,000 workers in the construction industry, of whom less than one-third were organized. That since the CIO was formed thousands of requests had been received from individuals and groups of construction workers asking organization or affiliation with the CIO. The requests were caused because of a desire for a modern form of organization.

Under the constitution of the CIO the executive officers have decided to establish United Construction Workers Organizing Committee. The work of the committee is directed to A. D. Lewis who is authorized to issue charters to construction workers who desire to affiliate.

A large number of Local Industrial Unions already chartered will be transferred to U.C.W.O.C. at once.

Dues will be $1.50 per month and no initiation fees.

The aim of U.C.W.O.C. will be to organize a powerful industrial union—abolish the evils and abuse of the industry—improve working conditions. [1172]

Special provision will be made to eliminate unauthorized strikes, jurisdictional disputes and lockouts, and for peaceful adjudication of labor disputes.

The declared objects are:

1. To unite in one organization construction workers.

2. Improve working conditions.

3. Stabilize industry by eliminating unauthorized strikes.

4. Provide education and better living conditions of members.

UNITED CONSTRUCTION WORKERS ORGANIZING COMMITTEE, AFFILIATED WITH CIO.

15th and Eye Streets, N. W.,
Washington, D. C. August 21, 1939.

Rules and Regulations of United Construction Workers Organizing Committee.

Innumerable requests from construction workers throughout the United States for affiliation with the CIO have been received and given consideration. To provide opportunity to join an organization of their own choosing,

free from the evils that have beset the industry, excessive dues, and exorbitant initiation fees, the CIO has organized U.C.W.O.C. The committee herewith promulgates the following rules and regulations to govern the activities of the organization:

1. (Objects same as declared in preceding document.)

2. This organization shall be known as United Construction Workers Organizing Committee.

3. Charters shall be issued to local unions of construction workers when, in the opinion of the committee, [1173] it is to the best interests of the organization to do so.

4. Ten eligible individuals may apply for a charter.

5. Creates and specifies the officers of a local union.

6. Prescribes the duties of the President.

7. Prescribes the duties of the Vice-President.

8. Prescribes the duties of a recording-secretary.

9. Prescribes the duties of a Secretary-Treasurer.

10. Prescribes the duties of a Board of Directors.

11. Provides for the election of a business agent, prescribes his duties and fixes salary.

12. Provides for the election of a Job

Steward, prescribes his duties and fixes salary.

13. The Committee shall determine as to an initiation fee.

14. Provides for disposition of fees.

15. Provides for dues.

16. Provides for dues books.

17. Provides dues shall be due on first of month.

18. The Committee is authorized to establish State or Regional departments under a director.

19. Provides against strike notice without authority from U.C.W.O.C.

20. The Committee shall make every effort to stabilize working conditions and adjudicate disputes.

21. Provides for elimination of jurisdictional disputes between classifications of employees.

22. Recognizes the necessity of adequate training of journeymen workmen.

23. Provides for election of officers.

24. Prescribes eligibility to offices.

25. Provides for removal from office.

26. Provides for audit of books by Committee. [1174]

27. Provides for supply of transfer cards.

28. Provides for transfer of members.

29. Provides for dismissal for arrearage in dues.

30. Committee is empowered to appoint organizers to act as business agents for locals.

31. Committee may suspend or revoke charters.

32. Committee is given control of locals relative to instructing on forms and financial records.

33. Provides rules and regulations may be changed in absolute discretion of committee. That locals may adopt rules or procedure to govern themselves not in conflict with the rules and regulations of the Committee.

A. D. LEWIS
Chairman U.C.W.O.C.

GARDNER H. WALES
Comptroller
U.C.W.O.C.

44. The Court erred in sustaining plaintiff's objection and refusing to admit in evidence defendants' Exhibit 2-O for Identification, as follows:

"Mr. Routzohn: Another release, your Honor please, and a letter, a circular letter which we will have marked Defendants' 2-O for identification.

"Mr. Clark: Is this along the same line?

"Mr. Routzohn: Yes.

"Mr. Clark: We object on the same ground.

"Mr. Routzohn: Except that it involves——

"Mr. Clark: Well, it is a CIO circular, isn't it?

"Mr. Routzohn: Yes.

"Mr. Clark: We object on the same ground.

"The Court: Sustained. [1175]

"Mr. Routzohn: Q. I hand you now defendants' Exhibit 2-O and ask you to state just what that is so we can get it in the record, is all.

"A. This is the circular that was circulated in some of the Congress of Industrial Organization—the construction industry.

"Mr. Routzohn: We offer Defendants' Exhibit 2-O.

"The Court: Is it along the same lines?

"Mr. Clark: We object to it, your Honor; it is a CIO Circular.

"Mr. Routzohn: Yes.

"The Court: Objection sustained.

The full substance of said rejected evidence is as follows:

SACRAMENTO
CIO

Phone Capital-5044

Edward J. Cherry, President,
J. T. Dudley, Secretary,
U. C. W. U., Local 66,
Affiliated with Congress of Industrial Organization,
821½ J Street,
Sacramento, California.

January 18, 1940.

To All Contractors and Builders.

Gentlemen:

We wish to call to your attention the fact that United Construction Workers Organizing

Committee has been organized on a nationwide scale.

We are attempting to eliminate jurisdictional disputes in the building industry by having all members of a construction crew belong to ONE union, instead of [1176] 26 or 27 different crafts, with attendant friction between crafts. In our opinion building costs can be considerably reduced, business increased and steadier employment obtained. The value of an industrial union where men can move to any part of a job without fear of a jurisdictional dispute, along with special provisions made for settlement of grievances can be readily seen by anyone familiar with construction work.

We are pleased to announce Sacramento Local 66 of U.C.W.O.C. (CIO) has available and can furnish competent men for all branches of construction industry.

Further information may be had at the above address by phone or letter.

Very truly yours,

EDWARD J. CHERRY,
President

Robert Chitwood,
Secretary.

CONSTRUCTION AND BUILDING TRADE WORKERS ATTENTION!!!

Local No. 66, U.C.W.U., is making a drive for membership on the following points:

1. No initiation fees at present.
2. Low dues.
3. Job protection.
4. All crafts in one union.
5. Chance to go to higher job if you can handle.
7. Special provision for handling grievances.
8. No "kick-back" of wages.
9. Organizes the workers instead of the boss.
10. Higher wages.
11. Chance to transfer to any CIO union without transfer or intiation fee. [1177]
12. Closed shop under "Low Cost Housing Builders of Sacramento.
13. A union instead of an employment agency.

These are some of the points on which we are building the union. Further information at meetings of Local No. 66 held every second and fourth Wednesday of the month. Next meeting January 24, 1940 at 7 P. M., 821½ J Street.

Organizing Committee,
Local 66,
U.C.W.O.C.
821½ J Street,
Sacramento.

FOR IMMEDIATE PRESS RELEASE

January 1, 1940.

Sacramento Citizens Committee on Slum Clearance and Low Cost Housing was formed January, 1939.

Since its formation a broad study has been made of housing conditions, particularly in Sacramento County.

It is found that for many years the building industry has not been building homes which can be purchased by families with low incomes. The United States Housing Authority has made progress in bringing the facts to the people and in actual clearing up of slum conditions.

Through lack of cooperation in the last session of Congress the program has been badly delayed and powerful interests used efforts to sabotage it.

A building program can contribute most to the return of prosperity. Decent homes are still beyond reach of those with low incomes. The four major items responsible are:

1. High cost material. [1178]
2. High contractors' profits.
3. High cost of labor due to jurisdictional disputes of craft unions.
4. Profits of real estate operators.

(1) 1 can be reduced by buying materials in large quantities.

(2) Contractors' profits will be eliminated.

(3) Reduction of labor costs by using members of the CIO.

(4) Real estate sales can be eliminated.

Can build four room, two bath room houses for less than $17.00 per month. Compared with rents there will be a great demand for such homes.

We are not condemning or criticizing contractors or real estate operators but profits must be eliminated to produce for the class of people who will need them.

Such a program could be used by states and counties.

We cannot too strongly stress the importance of the cooperation and help of the House Committee of the National Congress of Industrial Organization. (CIO).

President Roosevelt has, with truth, said that one-third of our nation is ill housed. We are going to make a determined effort to do something in our country.

(Signed) J. T. DUDLEY,
Secretary-Treasurer
SACRAMENTO INDUSTRIAL UNION COUNCIL (CIO)
Chairman
SACRAMENTO CITIZENS COMMITTEE ON SLUM CLEARANCE AND LOW COST HOUSING.

Address:
Sacramento Industrial Union Committee,
821½ J Street,
Sacramento, California. [1179]

45. The Court erred in sustaining plaintiffs' objection and refusing to admit in evidence defendants' Exhibit 2-P for identification as follows:

"Mr. Routzohn: Q. I hand you a paper writing which has been marked Defendants' Exhibit 2-P for identification and ask you to state what that is, Mr. Cambiano.

"A. A communication from the General Constractors Association of Contra Costa County.

"Q. Having to do with the CIO affairs?

"A. Yes.

"Q. In this very district in Contra Costa County?

"A. Yes, sir.

"The Court: Has it been marked?

"Mr. Routzohn: It has been marked for identification. I wish to offer it in evidence at this time, your Honor.

"Mr. Clark: We will object, your Honor, on the same grounds; the same type of offer that he has made, CIO.

"The Court: Sustained. Is that all?

"Mr. Routzohn: Except a statement that I would like to make at this time, if your Honor please.

"The Court: Very well.

"Mr. Routzohn: I will be very brief. That is that my individual thought has been throughout the trial of this case that there might be some claim made by the counsel for

the prosecution that the evidence in this case does not show, or there is a lack of evidence on our part to the effect a labor dispute existed throughout the period of the indictment.

"The Court: I don't care to hear any argument on that now.

"Mr. Routzohn: It is merely to show that there was a potential labor dispute existing in addition to the one with the employers that are involved in this case. [1180]

"The Court: All right. Well, I, of course——

"Mr. Routzohn: (interrupting): Your Honor, I have no ulterior motives at all.

"The Court: Oh, I appreciate that.

"Mr. Routzohn: Incidentally, there have been some—in addition to that, there has been a dual organization here and dual efforts which accounted for the refusal to handle, if your Honor please, a great deal of work that came from the Northwest, many of the things that have been testified to in this case.

"The Court: Yes. Well, have you finished with your evidence?

"Mr. Routzohn: Yes, your Honor."

The full substance of said rejected evidence is as follows:

General Contractors Association
of Contra Costa County April 29, 1940.
Richmond, California.

My dear Member:

This is your official notice of a Special Meeting to be held in Martinez, Thursday, May 2nd, at Memorial Hall, 7:30 P.M.

We must make up our minds about a Labor Agreement for the coming year, as our agreement with the A F of L expires May 14, 1940.

President *Enes* is anxious to have full membership attendance and as many contractor guests brought as possible.

The CIO has offered a very attractive agreement to this association and they are very desirous of having the agreement.

You know what the setup is now. Each craft has its [1181] own union, each working different hours and for a different wage.

Under this other arrangement all work would be carried on with the same hours per day with all crafts in the same union and a contractor would be able to hire direct any man or craftsman that he so desired.

In order that we don't make any costly errors in our bargaining, it is important you attend and bring a few contractor friends. In this manner we will be able to determine the wish of the majority and make a wise decision.

Sincerely yours,

Secretary.

46. The Court erred in sustaining plaintiff's

objection and striking out the testimony of the witness, Joseph F. Cambiano, as follows:

"Q. Have you ever at any time entered into an agreement with any intention whatsoever of violating the Interstate Commerce Law? A. No, I have Not.

"Mr. Clark: Just a minute, we move to strike out the answer as intent is immaterial.

"The Court: Let it go out. The objection is sustained."

47. The Court erred in excluding the testimony of defendants' witness, Joseph F. Cambiano, as follows:

"Q. There is a dispute on now, is there not, in 1941, over the wage scale?

"Mr. Clark: We object to that as immaterial, and as calling for the conclusion of the witness.

"The Court: The objection is sustained.

"Mr. Routzohn: Q. Is there an arbitration going on at the present time over the wage scale between the employers and the employees? [1182]

"Mr. Clark: We object to that as being immaterial to any issue in the case.

"The Court: Sustained.

48. Statements made by counsel for plaintiff during the trial and before the jury relative to defendants who had made a plea of nolo contendere and by reference to such as pleas of guilt, con-

stituted prejudicial misconduct, and the Court erred in overruling defendants' objections thereto, as follows:

"Thereupon opening argument for plaintiff was made by Mr. Clark, during which the following proceedings occurred:

"In the beginning of the case, when the indictment was returned there were eight labor unions in the case, and there were three employer associations and thirty-three millwork and patterned lumber concerns; there were thirty-nine individuals. Since that time some of them have dropped by the wayside by dismissal, some of them have plead what we call nolo contendere, and some have been dismissed. Now, in the beginning, there were these three associations on the Employers' side: The Lumber Products Association, over here in San Francisco. You will remember some of the testimony brought in, a gentleman by the name of Gaetjen, the Secretary of that. Then there was the Wood Products Association, over in Oakland, and that was Mr. Nat Edwards. You will remember that his name was featured in some of the testimony. A third employers' association was that of which Mr. Ennes is the Secretary, and that is the Cabinet Institute.

Now, the first two associations I have named have plead nolo contendere, and they are not to be considered by you in deciding their guilt.

As his Honor has told you, a plea of nolo contendere in this case is tantamount to a plea of guilt. [1183]

"Mr. Routzohn: Your Honor please, we object to the statement just made by the counsel relative to nolo contendere being a plea of guilt, and even the reference to the fact that certain defendants have entered pleas of nolo contendere.

"The Court: Your objection is overruled.

"Mr. Routzohn: All right.

"The Court: The Supreme Court of the United States has said that a plea of nolo contendere is tantamount to a plea of guilt. Now, the word 'tantamount' is my own word, but that is what the Supreme Court has said. So there is nothing in your objection, Judge.

"Mr. Routzohn: Well, may we have the instruction at this time, your Honor please, that that is not to be considered in any way affecting——

"The Court: No, no, you may not.

"Mr. Routzohn: (Continuing) ——the guilt or innocence of these defendants?

"The Court: You may not, and I shall instruct the jury to the same effect when it comes to final instructions."

49. The Court erred in instructing the jury, as follows:

"In Count I of the indictment the grand jury included among the defendants eight labor

unions, as well as some of their officials. I shall refer to these defendants as the labor union defendants. Also included in the indictment were three employer associations and some of their members as well as officials, which I shall call the non-labor defendants. Two of these employer associations, that is, the Lumber Products Association of San Francisco and Wood Products, Inc. of Oakland, as [1184] well as those defendants who were members thereof, and their officers, have pleaded nolo contendere. As I have heretofore explained to you, such a plea is an admission of guilt for the purposes of the case."

to which defendants excepted as follows:

"I except first, your Honor, to the portion of your Honor's charge which in effect characterized the nolo contendere pleas of the other defendants as admissions of guilt, and, in other words, to that part of the charge with respect to nolo contendere."

This exception was well taken in that such pleas should not have been characterized before the jury as admissions of guilt and it was improper to tell the jury that co-defendants had pleaded guilty or admitted guilt where such defendants did not appear as witnesses and testify in the case.

50. The Court erred in instructing the jury, as follows:

"You are to determine the guilt or inno-

cence of a corporation by an examination of the acts done by its responsible officers or agents. The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation.

"If you find that there did exist a combination and conspiracy such as is charged in the indictment, and that any defendant corporation participated therein, then I instruct you that such act of participating is deemed to be also the act of the individual director, officer or agent of such defendant corporation who authorized, ordered or did such act in whole or in part. [1185]

"Likewise, the list of defendants includes a number of labor union organizations and several members thereof. It has been stipulated in this case that these labor unions are associations. Like corporations, associations are separate entities within the meaning of the Sherman Act, and may be found guilty of violations of that act, separately and apart from the guilt or innocence of their members.

"You are to determine the guilt or innocence of the labor unions which are defendants in this case in the same manner as you determine that of the corporations, that is, by an examination of the acts of their agents."

to which defendant excepted as follows:

"We object, or, rather, wish to except expressly to the charge that we determine the guilt or innocence of the labor union defendants in the same way that you would the corporations with reference to the acts of their representatives and agents and with reference to the knowledge necessary to bind the union organizations, we take that exception" and "I also except to your Honor's charge with respect to the associations or corporations and your definition of them as being in substance separate entities, similar entities, and that they could be similarly found guilty upon the basis of acts of certain individuals associated with them."

"I likewise except specifically to that portion of the charge in this connection dealing with the responsibility of unincorporated associations, particularly such as that involved here, for the acts of its agents."

The exception was well taken because such instruction was erroneous in that it applied a civil rule without fully [1186] defining it and charged the jury that the union organizations would be criminally responsible for the act of an agent done within the scope of his authority, or which he has assumed to do while performing duties actually delegated to him, without regard to the actual authority for the particular act or knowledge thereof and con-

trary to the provisions of the Norris-LaGuardia Act, 47 Stat. 71; 29 U.S.C.A. Sec. 106.

51. For the reasons stated in the instruction the Court erred in refusing to give Instruction No. 55 requested by these defendants, as follows:

> "You are instructed that an officer of a union which is an unincorporated association is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy. In order to bind any union organization, therefore, by the act of a representative or officer it is necessary to find that the union had authorized or ratified the act,"

to which refusal defendants excepted, as follows:

> "I wish to take the following exceptions to the charge, if your Honor please. Referring to the proposed instructions of the union defendants, we wish to except to the Court's not giving Instructions No. 55, 56, 57 and 58 relating to the binding effect of representatives acts on the union defendant organizations, and with reference to the knowledge of the union organizations of those acts. I assume that I should restrict myself to the numbers.
>
> "The Court: I think so. I think that will be sufficient."

52. For the reasons stated in the instruction the Court erred in refusing to give Instruction No. 56 requested by [1187] these defendants, as follows:

> "You are instructed that no labor union or

organization can be found guilty in this case for an unlawful act or acts, if any, of individual officers, members or agents, unless you find upon clear proof from the evidence that such labor organization actually participated in, or actually authorized such unlawful act, if any, or ratified such an act, if any, after actual knowledge thereof."

The exception taken is quoted in Assignment No. 51, and by this reference is incorporated herein.

53. For the reasons stated in the instruction the Court erred in refusing to give Instruction No. 56 requested by these defendants, as follows:

"You are instructed that no individual defendant who is an officer or member of one of the labor organizations involved can be found guilty in this case for an unlawful act, or acts, if any, of other officers, members or agents of such union organizations, except upon clear proof from the evidence that such individual defendant actually participated in or actually authorized such an act or ratified such unlawful act, if any, after actual knowledge thereof."

The exception taken is quoted in Assignment No. 51, and by this reference is incorporated herein.

54. The Court erred in instructing the jury, as follows:

"I have spoken of interstate commerce. As stated, it consists of the shipment of commodities or materials from one state to another. In

this case the question is whether the labor union defendants entered into a combination with the non-labor defendants whereby the defendants intended to or did bring about an undue restric- [1188] tion of or interference with interstate commerce in millwork or patterned lumber. It is the nature of the restraint and its effect on interstate commerce, and not the amount of the commerce which are the tests of violation.

"If a group of California lumber dealers should stop a truck coming from Oregon loaded with lumber because they did not want any Oregon lumber in California, and prevent its entry, that is an unreasonable interference with interstate commerce, although it involves only one truckload of lumber."

to which defendants excepted, as follows:

"I except further in connection with your Honor's description of the nature of the restraint and your statement, in effect, that the nature of the restraint and not the amount was the sole test of guilt."

The exception was well taken because such instruction was erroneous in that it disregarded the rule of reason and charged the jury that the nature and effect of the restraint was the sole test of guilt without regard for the amount or purpose of the restraint.

55. The Court erred in instructing the jury, as follows:

"If you find that the employer and labor union defendants entered into an agreement or understanding, oral or written, under the terms of which the employer defendants agreed not to purchase patterned lumber and millwork manufactured under a lower wage scale than that prevailing in the San Francisco Bay Area, including patterned lumber and millwork manufactured in States outside the State of California; or if you find that the employer and labor union defendants entered into an agreement [1189] or understanding, oral or written, under the terms of which the employer defendants agreed not to purchase and the labor union defendants agreed not to work on any patterned lumber or millwork manufactured under conditions unfair to the employer defendants including patterned lumber and millwork manufactured outside the State of California; such an agreement or understanding would constitute a violation of the Sherman Act as charged in the indictment. It would constitute no defense under the law, either to the employer defendants or to the labor union defendants that the agreement or understanding may have been arrived at in settlement of a labor dispute; and it would likewise constitute no defense under the law that any such agreement or understanding may have been arrived at as the result of proceedings in arbitration of such a dispute."

to which defendants excepted, as follows:

"We except to the charge that where we find an employer and a labor union defendant agreeing not to purchase lumber under different wage scales and affecting out of state lumber, or where they agree not to work on such material or lumber that is unfair to the employer, that such is a violation in and of itself of the Sherman Act; that there is no defense here by reason of the fact that any contract or agreement or understanding was arrived at in settlement of a labor dispute. The charge that the existence or non-existence of a labor dispute here is immaterial, that is no defense that any contract was as a result of a proceeding, for arbitration of a labor dispute, or as a result of such arbitration," * * * and, "I also wish to except to that portion of your Honor's charge dealing with the matter of the lower wage [1190] scale not being a matter of defense, but in effect being a substantial ground for conviction. And to that portion of the charge to the effect that conditions unfair to the employers would not execute the actions here and would in effect, standing alone, constitute a violation of the statute. Further, in that connection, with respect to the fact that in the arrival at the agreement there was no defense, rather, that the agreement was arrived at in settlement of a labor dispute, or in the arbitration of such a dispute being deemed by your Honor not to be a defense."

The exception was well taken because such instruction was erroneous in that it charged the jury that if the employer and labor defendants entered into an agreement not to purchase or work upon material manufactured under different working conditions, including material from outside the State of California, such would constitute a violation of the Sherman Act as charged in the indictment, and that it would be no defense that such agreement was arrived at in settlement of a labor dispute or as a result of proceedings in arbitration of such a dispute, thereby withdrawing from the jury any question of fact which would give rise to the application as a matter of law of the Clayton Act, 38 Stat. 730, or the Norris-LaGuardia Act, 47 Stat. 29, and denied as a matter of law the application of such statutes to the case.

56. The Court erred in instructing the jury, as follows:

> "If you find that the employer and labor union defendants entered into a combination and conspiracy, the object of which was to prevent the purchase or importation by the employer defendants or other persons, firms, corporations, or parties within the State [1191] of California, of patterned lumber and millwork manufactured under conditions unfair to the employer defendants including patterned lumber and millwork manufactured outside the State of California; or if you find that the employer and labor union defendants entered into

a combination and conspiracy, the object of which was to prevent the purchase or importation by the employer defendants or other persons, firms, corporations, or parties within the State of California of patterned lumber and millwork manufactured under a lower wage scale than that prevailing in the San Francisco Bay Area, including patterned lumber and millwork manufactured outside the State of California, such a combination and conspiracy would constitute a violation of the Sherman Act, as charged in the indictment. It would constitute no defense under the law, either to the employer defendants or to the labor union defendants, that the combination and conspiracy may have been arrived at as the result of the settlement of a labor dispute; and it would likewise constitute no defense under the law that any such combination and conspiracy may have been arrived at as the result of proceedings in arbitration of such a dispute,"

to which defendants excepted as follows:

"We except to the charge that * * * if the parties entered into a conspiracy not to work on material unfair to employers, regardless of their motives or intent on the part of the union defendants, such would constitute a violation of the act—I am referring to the Sherman Act * * * and if a conspiracy was entered into not to purchase or work upon lower wage

scale material, affecting materials from outside the State of California; that that in and of itself would constitute a violation of the Sherman Act regardless of motive, intent or objectives with which the Union defendants [1192] were acting, and it is no defense that any activities here resulted from labor disputes."

The exception was well taken because such instruction was erroneous in that it withdrew from the jury any question of fact which would give rise to the application as a matter of law of the Clayton Act, 38 Stat. 730, or the Norris-LaGuardia Act, 47 Stat. 29, and denied as a matter of law the application of such statutes to the case.

57. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 82 requested by these defendants, as follows:

"Either agreements or acts done in furtherance thereof by labor defendants for the purpose of furthering the unionization of other shops in the same industry in order to better the conditions and wages of the employees is a legitimate labor activity and does not violate the Sherman Act even though there is also present the motive of lessening interstate competition for union operators, which in turn lessens the pressure of the employer for reduction of the union scale or resistance to an increase. To find any labor defendant guilty of violating the Sherman Act you must find

beyond a reasonable doubt the existence of a primary intent to directly restrain interstate commerce. If the effect upon interstate commerce is merely incidental to an intent to improve working conditions, it is your duty to acquit the labor defendants."

to which refusal defendants excepted, as follows:

"We except, take the same exception to the refusal to give the following numbered instructions: 59, 60, 61, 62, 63, 64, 65, 66, 67, 68; 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91 and consecutively right on through to 100, 101, 102, 105; that relates to the charge as refused to be given, of course." [1193]

58. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 83 requested by these defendants, as follows:

"The making of the agreement of September 21, 1936 by the defendant unions was not a violation of the Sherman Act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

59. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 84 requested by these defendants, as follows:

"The execution of the agreement of September 21, 1936 would not warrant a conviction under this indictment because it does not constitute the conspiracy described therein."

The exception taken is quoted in Assignment No. 53, and by this reference is incorporated herein.

60. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 85 requested by these defendants, as follows:

> "The union defendants had the lawful right to take the position as set forth in the agreement of September 21, 1936 that members of their unions would do no work upon any material or article that has had any operation performed on same by sawmills, mills or cabinet shops or their distributors that did not conform to the rates of wage and working conditions prescribed by the agreement of September 21, 1936, and such acts on the part of the unions and their members do not constitute a violation of the Sherman Act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein. [1194]

61. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 86 requested by these defendants, as follows:

> "Workmen are under no legal obligation to work on any kind of material. If the defendant unions and their members deemed it to their interest to refuse to work on material not manufactured in conformity with the rates of wage and working conditions prescribed by the agreement of September 21, 1936, they had a legal right so to do and the mere fact that

such material may have been made in some state other than California does not render such refusal unlawful or in violation of the Sherman Act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

62. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 87 requested by these defendants, as follows:

"In order to find any labor defendant or organization guilty in this case, you must find that he or it was not acting with the intent of furthering the legitimate objectives of labor relating to the improvement of conditions of employment, but on the contrary with the specific and sole intent of being a tool or instrument of the employers to suppress competition or fix prices."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

63. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 88 requested by these defendants, as follows:

"You are further instructed as to both union organizations and individual defendants affiliated with such union organizations that since the acts charged here [1195] against said defendants are relevant to labor conditions and legitimate objectives of labor, in order to find any of such defendants guilty you must find beyond a reasonable doubt that he or it either

participated in, actually authorized or ratified such an act, not with the intent of carrying out legitimate objectives of labor but in combination or conspiracy with the employers with the unlawful intent of restraining interstate commerce by restraining or eliminating the competition from out of the state material.

"You are further instructed that since the acts attributed to the labor defendants are lawful, unless participated in, expressly authorized or ratified with such unlawful intent, the fact that such activities in fact result in a restraint upon interstate commerce does not give rise to the presumption of an unlawful intent, since if two legal presumptions may reasonable arise from the evidence, the law will presume a legal rather than an illegal intent."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

64. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 89 requested by these defendants, as follows:

"The negotiating, making or carrying out by the union defendants of the agreement of September 21, 1936, and the provisions thereof that no work would be done on any material or article having an operation performed on it by mills, saw-mills, cabinet shops, or their distributors that do not conform to the rates of wage and working conditions of such agree-

ment, or the negotiating, making or carrying out of any subsequent agreement or [1196] understanding continuing such provision of the agreement of September 21, 1936, in effect is lawful and not a violation of the Sherman Act on the part of said union defendants, unless you find that such agreement was not made to carry out the interests and labor objectives of the unions but solely with intent to conspire and combine with the employer defendants to make the unions the instrument of the employer to restrain interstate commerce to eliminate competition from millwork and patterned lumber in interstate commerce."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

65. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 90 requested by these defendants, as follows:

"You are instructed that the negotiation and making of such an agreement as the contract of September 21st, 1936, covering wage scale and working conditions is within the legitimate objective of a labor union. You are further instructed that the elimination of price competition based upon differences in labor standards is the objective of any national labor union and with the object of promoting this interest, or any other legitimate object of labor such as the unionization of other mills in the industry, defendant labor unions had

the right to agree that no material should be purchased from, or work done on any material or article that had any operation performed on same by saw mills, mills, or cabinet shops, or other distributors not conforming to the rates of wage and working conditions of such agreement. You are further instructed that the labor defendants had the right to carry out and enforce the carrying out of [1197] such agreement in their own interest by peaceful and lawful means such as picketing and threatening to picket; strikes or threats to strike and advertising by other peaceful means the existence of material manufactured or handled under different conditions and standards and considered unfair to defendant unions."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

66. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 91 requested by these defendants, as follows:

"You are instructed that the agreement of September 26th, 1936 on its face relates to wages and conditions of employment for the union defendants, and the provision thereof to the effect that no material should be purchased or worked upon that had previously had an operation performed thereon by saw mills, mills, cabinet shops, or their distributors that do not conform to the rates of wage and work-

ing conditions of such agreement, was a lawful provision for the unions to agree upon. You are further instructed that the carrying out of such agreement by the peaceful means as charged in the indictment was likewise lawful on the part of the union defendants and you are instructed to acquit the union defendants unless you find that in the making and carrying out of such agreement the unions were not acting in their own self-interest and to carry out their own labor objectives.".

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

67. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 76 requested by [1198] these defendants, as follows:

"An attempt to unionize non-union workers and improve working conditions of labor employed in an industry involves a labor dispute within the meaning of the Norris-LaGuardia Act, and such activity on the part of a labor union is therefore exempted from the operation of the Sherman Act, and does not violate that Act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

68. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 77 requested by these defendants, as follows:

"You are instructed that a labor dispute 'includes any controversy covering terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.' A person is participating or interested in a labor dispute if he is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft or occupation."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

69. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 78 requested by these defendants, as follows:

"In determining whether a case involves or grows out of a labor dispute the words 'terms or conditions [1199] of employment' are not limited to meaning only the ordinary case where one person hires out to another for a stipulated wage or salary. Employment means act of employing or state of being employed; that which engages or occupies or which consumes time or attention. A case involves or

grows out of a labor dispute when it involves persons engaged in the same industry, trade, craft or occupation, or who have direct or indirect interests therein and a person or association shall be held to be participating or interested in a labor dispute if he or it is engaged in the same industry, trade, craft or occupation in which such dispute occurs. The term 'labor dispute' includes any controversy concerning terms or conditions of employment.

"You are, therefore, instructed that the agreement of September 21, 1936 between employers and the union organizations which resulted from negotiations to fix terms and conditions of employment involved and grew out of a labor dispute and the making of such agreement on the part of the union defendants was not a violation of the Sherman Act. You are further instructed that the carrying out of and enforcement of such agreement by the union defendants through peaceful means such as picketing, strikes or threats to strike would not violate the Sherman Act on the part of the union defendants. You are further instructed that a conspiracy or combination to accomplish what is lawful by lawful acts or agreements on the part of an alleged conspirator cannot be unlawful."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

70. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 79 requested by these defendants, as follows: [1200]

"You are instructed that if the agreement of September 21, 1936 between the union defendants and employers was made after or as a result of a controversy or dispute as to wages and conditions of employment and the union defendants demanded or wanted the provision thereof that no material should be purchased or work done thereon which had been manufactured or distributed under rates of wage and working conditions not conforming to such agreement, in order to establish a uniform condition of labor conditions, unionize other mills in the industry, gain jobs or better wages, or for any other legitimate purpose of a labor organization, you should acquit the union defendants for then neither the making of said agreement, nor any renewal thereof, nor the carrying out of such an agreement by the means charged in the indictment, is unlawful on the part of the union defendants."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

71. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 80 requested by these defendants, as follows:

"You are instructed that if the agreements between employers and employees, and any ac-

tivities of the labor defendants pursuant thereto arose from a labor dispute or labor disputes, then such agreements or activities on the part of the labor defendants are not unlawful as to such labor defendants, regardless of their intent and regardless of the intent of the defendant employers with whom they are charged with having conspired to violate the Sherman Act, and if such agreements or activities are the result of labor disputes, then you are instructed to acquit the union defendants." [1201]

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

72. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 68 requested by the employer defendants, as follows:

"You are instructed that even if you find that defendant manufacturers entered into an agreement with defendant unions to purchase only millwork and patterned lumber manufactured under certain specified conditions, or to buy them only from union shops, if such agreement was one of the terms or conditions of employment arising out of a labor dispute between them, such agreement would not be a violation of the Sherman Anti-Trust Law,"

to which refusal defendants excepted, as follows:

"And we except to the failure to give the instructions proposed * * * the instructions based upon the Norris-LaGuardia Act, * * * 68 based

upon a definition of a labor dispute, taken from the Hinton case. That is also Instructions 69, 70 and 71.

73. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 69 requested by the employer defendants, as follows:

> "You are instructed that if you find that defendant manufacturers purchased only millwork and patterned lumber manufactured under certain specified conditions, or only from manufacturers located in the San Francisco Bay Area, pursuant to an agreement with defendant unions concerning terms or conditions of employment arising out of a labor dispute, then the defendants would, upon such facts, be not guilty of a violation of the Sherman Act."

The exception taken is quoted in Assignment No. 72, and by this reference is incorporated herein. [1202]

74. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 70 requested by the employer defendants, as follows:

> "A labor dispute may be defined as a controversy concerning terms or conditions of employment.
>
> "A controversy by defendant manufacturers with defendant unions concerning whether defendant manufacturers should purchase mill-

work and patterned lumber manufactured under certain specified conditions would be a controversy concerning terms of employment, and therefore, a labor dispute."

The exception taken is quoted in Assignment No. 72, and by this reference is incorporated herein.

75. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 71 requested by the employer defendants, as follows:

"You are instructed that a contract concerning terms or conditions of employment between organizations of employers and organizations of employees, arising or growing out of a labor dispute, is not a violation of the Sherman Anti-Trust Act."

"A provision in a contract, arising out of a labor dispute, requiring defendants to purchase only material that was produced under certain specified conditions would be one concerning terms or conditions of employment."

The exception taken is quoted in Assignment No. 72, and by this reference is incorporated herein.

76. The Court erred in instructing the jury, as follows:

"Labor unions or their members may join together in promoting their self-interest, even though their acts in so doing may result in an undue obstruction of inter- [1203] state commerce. But they can do this only so long as

> they act in their self-interest and do not combine with non-labor groups. Here the Government charges that the labor union defendants combined and conspired with the non-labor defendants in entering into and doing the things complained of, which charge, if true, is a violation of the Sherman Act. So, if any one or more of the labor union defendants combined and conspired with any one or more of the non-labor defendants, including those pleading nolo contendere, to do the things that the Government charges here, even though the motive of the labor union defendants was to promote their self-interest, you must find the defendants, or any of them, who so combined and conspired, guilty as charged."

to which defendants excepted as follows:

> "I also except to that portion of your Honor's charge which in effect stated that the mere fact of an agreement with a non-labor defendant under the circumstances described in your Honor's charge would amount to a violation of the statute; also in that connection, the statement in effect that to promote self-interest was no defense."

The exception was well taken because such instruction was erroneous in that it charged that a labor defendant would be guilty if he or it combined and conspired with a non-labor defendant to do an act resulting in an obstruction to interstate

commerce even though the motive of the labor defendant was to promote self-interest, thereby denying efficacy to the Clayton Act, 38 Stat. 730, and the Norris-LaGuardia Act, 47 Stat. 29, in the case of an agreement between employer and employee made solely at the instance of labor to promote its own self-interest and legitimate objectives, contrary to the provisions of the statutes.

77. The Court erred in instructing the jury, as follows: [1204]

> "Some testimony has been heard here concerning the union label of the United Brotherhood of Carpenters and Joiners of America. In this connection, I charge you that whether the millwork and patterned lumber involved in the testimony in this case was manufactured in mills whose employees were members of the United Brotherhood of Carpenters and Joiners of America or of its affiliated unions, or whether such millwork and patterned lumber bore a union label is not to be considered by you. The sole question is whether defendants intended to or did restrain the shipment of millwork and patterned lumber in interstate commerce pursuant to an understanding between the labor union defendants and the non-labor defendants,"

to which defendants excepted as follows:

> "I also except * * * to that portion of the charge which in substance stated that the pro-

tection of the label or the use or non-uses of the label was not to be considered by the jury."

The exception was well taken because such instruction was erroneous in that it charged the jury that the enforcement of the union label or any other objective of labor was immaterial and withdrew from the consideration of the jury all questions concerning the motives, intent or objects which promoted the acts of the union defendants, so as to eliminate all questions of fact related to a defense under the Clayton Act, 38 Stat. 730, or the Norris-LaGuardia Act, 47 Stat. 29, and denied as a matter of law application of such statutes to the case.

78. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 59 requested by these defendants, as follows:

"This is not a civil case. It is a criminal pro- [1205] secution. In such cases, a criminal intention must accompany the act in order to constitute a crime. And, the act itself, while it may be the basis for the inference of a criminal intention by the jury, if unaccompanied by such criminal intent, is not crime."

The exception taken is quoted in assignment No. 57, and by this reference is incorporated herein.

79. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 61 requested by these defendants, as follows:

"Under the penal provisions of the Sherman Act, upon which the indictment in this case is

based, it devolves upon the prosecution to prove beyond a reasonable doubt that the defendants had a criminal intent, and criminal intent means an intent or purpose to do knowingly and wilfully that which is condemned as wrong by the act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

80. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 62 requested by these defendants, as follows:

"You are instructed that intent is a fact to be proved as any other fact; it is the state of mind from which an act is done; it is the motive from which an act springs. While the law presumes that a person intends the natural and probable consequences of acts intentionally done, and that an unlawful act implies an unlawful intent, such presumption does not arise from an act or series of acts which are not of themselves unlawful. The burden of establishing an illegal intent is upon the prosecution and continues throughout the case [1206] until it is proven by the evidence, to the exclusion of reasonable doubt, that an illegal intent exists."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

81. For the reasons stated in the instruction,

the Court erred in refusing to give Instruction No. 65 requested by these defendants, as follows:

"You are instructed that the Sherman Act is not aimed at the policing of interstate transportation or movement of goods. You are instructed that a labor union has a constitutional right to picket any railroad car or other container of products which is considered unfair to union labor because of the conditions of employment under which such products have been produced in order to advertise to the world that such goods are unfair. You are further charged that any person may lawfully decline to work upon or handle such products considered unfair to the labor organization with which he is affiliated and none of such acts is unlawful under the Sherman Act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

82. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 66 requested by these defendants, as follows:

"You are instructed that one party to an agreement may violate the Sherman Act, whereas the other party may not because of the difference in intent and motives which may actuate the making of the contract and its performance."

The exception taken is quoted in Assignment No.

57, and by this reference is incorporated herein. [1207]

83. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 67 requested by these defendants, as follows:

> "You are instructed that parties to an agreement may enter into it actuated by different motives and intent. You are instructed that if the labor defendants entered into the agreements involved in this case for the purpose of furthering their own interests and labor objectives—and not merely as tools or instruments to carry out some wrongful intent, if any, of the employers, then even though you should find the existence of a wrongful intent on the part of the employers, you are instructed that you must acquit the labor defendants and they are not guilty of the charges contained in the indictment."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

84. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 68 requested by these defendants, as follows:

> "You are instructed that as to every individual defendant affiliated with the labor unions you should return a verdict of acquittal unless you find that he was not acting in furtherance of the legitimate objects of his labor union, but on the contrary was acting in combination with

the employer defendants with the intent to restrain interstate commerce in millwork and patterned lumber in order to eliminate competition and effect prices of such interstate commerce."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

85. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 75 requested by [1208] these defendants, as follows:

"You are instructed that if you believe from the evidence that the union defendants in making and carrying out the agreement of September 21st, 1936 and any renewals thereof were acting in their own self-interest to carry out legitimate objectives of labor, such as the creation of a uniform standard of wages for the industry, the improvement of wages, the gaining of employment or the unionization of other mills in the industry, the fact that some or all of the employers had a different or ulterior motive in making and carrying out the agreement would not make such activities on the part of the union defendants unlawful, but, on the contrary, the carrying out of such objects through the medium of the agreement would be lawful and not a violation of the Sherman Act on the part of the union defendants."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

86. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 81 requested by these defendants, as follows:

> "Even though labor agreements or activities intend to restrain or impede interstate shipments, or commerce in the sense that a person must be taken to intend the natural and probably consequence of his act, still such is not a violation of the Sherman Act if such is merely incidental to the enforcement of union demands, for such is not the kind of restraint of trade or commerce which the Sherman Act condemns.
>
> "Restraints on the sale of the employee's services to the employer, however much they curtail the competition among employees, are not in themselves combinations or conspiracies in restraint of trade or commerce under [1209] the Sherman Act. The elimination of price competition based on differences in labor standards is the objective of any national labor union, for in order to render a labor organization effective it must eliminate the competition from non-union goods. You are therefore instructed that if you find that the labor defendants acted in their own self-interest and to carry out their own objectives of labor such as a better wage scale and conditions of employment and more jobs for the union members, they are not guilty of any violation of the Sherman Act."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

87. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 89 requested by these defendants, as follows:

> "The negotiating, making or carrying out by the union defendants of the agreement of September 21, 1936 and the provisions thereof that no work would be done on any material or article having an operation performed on it by mills, saw mills, cabinet shops, or their distributors that do not conform to the rates of wage and working conditions of such agreement, or the negotiating, making or carrying out of any subsequent agreement or understanding continuing such provision of the agreement of September 21, 1936, in effect is lawful and not a violation of the Sherman Act on the part of said union defendants, unless you find that such agreement was not made to carry out the interests and labor objectives of the unions but solely with intent to conspire and combine with the employer defendants to make the unions the instrument of the employer to restrain interstate commerce to eliminate competition from millwork and pat- [1210] terned lumber in interstate commerce."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

88. For the reasons stated in the instruction, the

Court erred in refusing to give Instruction No. 100 requested by these defendants, as follows:

> "You are instructed that by the indictment in this case it is charged that defendant unions were not attempting to enforce or protect the right to bargain collectively nor acting in the course of a legitimate labor dispute as to wages, hours and working conditions or as to any other legitimate objective of labor, but solely to prevent the manufacturers against whom the alleged combination and conspiracy was alleged to be directed from engaging in interstate commerce in millwork and patterned lumber in the San Francisco Bay Area, and you are instructed that the burden is upon the prosecution to establish to your satisfaction beyond a reasonable doubt and to a moral certainty that such charges are true, or you should acquit the union organizations and each individual union defendant."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

89. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 105 requested by these defendants, as follows:

> "You are instructed that as to every individual defendant affiliated with the labor unions you should return a verdict of acquittal unless you find that he was not acting in furtherance of the legitimate objects of his labor union, but

on the contrary was acting in combination with the employer defendants with the [1211] intent to restrain interstate commerce in millwork and patterned lumber."

The exception taken is quoted in Assignment No. 51, and by this reference is incorporated herein.

90. For the reasons stated in the instruction the Court erred in refusing to give Instruction No. 52 requested by the employer defendants, as follows:

"I charge you that there are certain types of crime which are complete when the person intentionally does the acts denounced by the law. There is another class of crime which requires not only the deliberate act but a further aggravation of that act, to-wit: specific intent. The first intent, that is, general intent, is merely to do the act; the second class is to do the act and aggravate it by specific intent that this act may bring about a certain result. In the instant case, the indictment charges the defendants with conspiring and agreeing together for the purpose of unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber as defined in the indictment. Under this charge it is, therefore, necessary for the jury to find that each defendant joined a conspiracy with specific intent of unduly, unreasonably and directly restraining interstate trade and commerce in millwork and patterned lumber as defined in the indictment."

to which defendants excepted as follows:

"The question of intent, your Honor, in Instructions 52 to 52-D."

91. The Court erred in instructing the jury, as follows:

"The fact that the contracts introduced in evidence [1212] also included a clause which has often been referred to in the course of this trial and which recites that nothing in the contract is to be interpreted as to in any way interfere with any business of the Federal Government or that of an interstate common carrier or any regulation of the Federal Trade Commission or the Sherman Anti-Trust Laws is not conclusive as to the purpose of the contracting parties,"

to which defendants excepted, as follows:

"Next and finally, I wish to except * * * to that portion of your Honor's charge which in effect states that the provision with respect to a non-violation of the four phases of the Federal Statutes contained in the several agreements would not be deemed as conclusive with respect to purpose."

The exception was well taken because such instruction was erroneous in that it failed to charge concerning the full legal effect of such clause and the province of the jury in applying such effect to the relevant facts found by the jury.

92. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 92 requested by these defendants, as follows:

"You are instructed that the agreement dated September 21, 1936 was legal on its face."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

93. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 93 requested by these defendants, as follows:

"You are instructed that the agreement of 1938 was legal on its face."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein. [1213]

94. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 94 requested by these defendants, as follows:

"You are instructed that the agreement of 1938 as amended or modified under date of October 18, 1939 was legal on its face."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

95. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 95 requested by these defendants, as follows:

"You are instructed that the agreements effective May 1st, 1939 to May 1, 1940 were legal on their face."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

96. For the reasons stated in the instruction,

the Court erred in refusing to give Instruction No. 96 requested by these defendants, as follows:

> "You are instructed that the clause in such contracts that "Nothing herein is to be interpreted as to in any way interfere with any bussiness of the Federal Government, or that of an interstate common carrier, or any regulations of the Federal Trade Commission or the Sherman Anti-Trust Law" was a lawful provision in such contracts and that any defendant who relied thereon as exempting from the operation of the preceding clauses interstate commerce should be acquitted for reliance on such clause would be inconsistent with an intent to conspire against interstate commerce."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein. [1214]

97. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 97 requested by

> "You are instructed that the union defendants have the right to decline to work or agree not to work upon products made by a CIO or a company union in carrying out their own labor objectives."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

98. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 98 requested by these defendants, as follows:

> "You are further instructed that in the ex-

ercise of the right of the union defendants to refuse to handle or work on such products considered unfair, the union defendants had the right to picket freight cars containing such material and to advertise to the world the fact that such material was "hot" or unfair."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

99. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 99 requested by these defendants, as follows:

"You are further instructed that where such unfair or "hot" material was found mingled in a shipment with fair or labeled lumber which could not be reached without first removing the unfair lumber, or was so mingled as to attempt a fraud on the aforesaid policy of the union not to handle or work upon such unfair material, then the unions and any individuals affiliated with such unions had the right to refuse to touch or work on the cargo as a whole."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein. [1215]

100. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 2 requested by defendant Alameda County Building and Construction Trades Council, as follows:

"I instruct you that the publication, unaccompanied by violence, of a notice that the employer is unfair to organized labor and re-

questing the public not to patronize him is an exercise of the right of free speech guaranteed by the First Amendment which cannot be made unlawful by act of Congress,"

to which refusal defendants excepted, as follows:

"The defendant, Alameda County Building and Construction Trades Council, asks its exception be noted to your Honor's failure to give Instructions 1 to 13, inclusive, and we ask to concur in the exceptions made by other counsel to the instructions actually given.",

101. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 3 requested by defendant Alameda County Building and Construction Trades Council, as follows:

"I instruct you that under the Constitution of the United States and under the Constitution of the State of California, all citizens are guaranteed the right of free speech. I further instruct you that if you find that the defendants or some of them participated in picketing certain places of business, and that such picketing was carried on by peaceful means, then I instruct you that such picketing was an exercise of the right of free speech by those defendants who participated in the picketing."

The exception taken is quoted in Assignment No. 100, and by this reference is incorporated herein. [1216]

102. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No.

4 requested by defendant Alameda County Building and Construction Trades Council, as follows:

> "I instruct you that under the law in California, picketing carried on for the purpose of seeing who can be the subject of persuasive inducement is legal. Therefore, I instruct you that if you find that the picketing in this case was conducted for the purpose of peaceful persuasion, then I instruct you that such picketing is legal."

The exception taken is quoted in Assignment No. 100, and by this reference is incorporated herein.

103. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 5 requested by defendant Alameda County Building and Construction Trades Council, as follows:

> "Under the laws of the State of California, picketing may lawfully be carried on by any group of citizens, and so long as peaceful means are used in connection with the picketing, such picketing is a mere exercise of the right of free speech which is guaranteed to every citizen by the Constitution of the United States and by the Constitution of the State of California."

The exception taken is quoted in Assignment No. 100, and by this reference is incorporated herein.

104. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 6 requested by defendant Alameda County Building and Construction Trades Council, as follows:

"I instruct you that under the laws of California, picketing is lawful if carried on by peaceable and per- [1217] suasive means. If you find that the picketing in this case was carried on for the purpose of actually interfering with the peaceable entrance to a place of business, or peaceable exit therefrom, then such picketing was unlawful, but if you find that such picketing was carried on for the purpose of influencing or persuading members of the public by peaceful means, then I instruct you that such picketing was lawful."

The exception taken is quoted in Assignment No. 100, and by this reference is incorporated herein.

105. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 7 requested by defendant Alameda County Building and Construction Trades Council, as follows:

"I instruct you that these defendants had a legal right, under the laws of the State of California, to withdraw social and business intercourse with any person or persons, and that they also had the right by all legitimate means, that is to say, by fair publication and fair oral or written persuasion to induce others interested in or sympathetic with their cause to withdraw their social intercourse and business patronage from any such person or persons."

The exception taken is quoted in Assignment No. 100, and by this reference is incorporated herein.

106. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 8 requested by defendant Alameda County Building and Construction Trades Council, as follows:

> "You have heard the witnesses and the attorneys in this case refer to a boycott carried on by the defendants or some of them against certain places of business. The [1218] Supreme Court of California has defined a boycott as being an organized effort to persuade or coerce, which may be legal or illegal according to the means employed. In other words, and as applied to the facts in this case, the defendants had a legal right to conduct an organized boycott of certain places of business, and in pursuance of the boycott, to endeavor to persuade the public not to patronize the places of business under boycott, provided no illegal means were used in the carrying out of the boycott. Therefore, I instruct you that if you find that the defendants did carry on an organized boycott of such places of business, but that in doing so, they neither committed nor threatened any act of violence, then I instruct you that the boycott was legal."

The exception taken is quoted in Assignment No. 100, and by this reference is incorporated herein.

107. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 9 requested by defendant Alameda County Building and Construction Trades Council, as follows:

"I instruct you that if you find that the acts committed by the defendants, as shown by the evidence, were in themselves legal, and not wrong, I advise you that those acts are not rendered illegal merely by reason of any bad motive or bad or malicious intent with which such acts were done."

The exception taken is quoted in Assignment No. 100, and by this reference is incorporated herein.

108. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 101 requested by these defendants, as follows:

"You are instructed that in determining the intent [1219] with which any union defendant acted it is the policy of the City and County of San Francisco in the letting of contracts for public works and the purchase of public supplies to favor local industry by a price differential and to also favor the employment of local labor."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

109. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 102 requested by these defendants, as follows:

"You are further instructed that activities to obtain the benefit of such local laws and in furtherance of such public policy favoring local products in public contracts or the advocacy of the use of local products as opposed to

outside products by peaceful, conventional means do not violate the Sherman Act. Such activities are entirely legal so long as illegal means of coercing the exercise of free will are not employed."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

110. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 103 requested by these defendants, as follows:

"You are instructed that the advocacy of the use of local products as opposed to outside products by peaceful, conventional means does not violate the Sherman Act. Such activity is entirely legal so long as illegal means of coercing the exercise of free will are not employed."

The exception taken is quoted in Assignment No. 57, and by this reference is incorporated herein.

111. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 61 requested by [1220] the employer defendants, as follows:

"You are instructed that under the National Labor Relations Act employers may be compelled to negotiate and bargain collectively with the representatives of their employees."

to which refusal defendants excepted, as follows:

"And we except to the failure to give the instructions proposed * * * Instruction 61, that

under the National Labor Relations Act an employer is compelled to bargain collectively."

112. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 62 requested by the employer defendants, as follows:

"You are instructed that the public policy of the United States guarantees full freedom to labor to organize for the purpose of negotiating the terms and conditions of employment and in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

"It is the public policy of the United States to encourage industrial peace by the execution of collective bargaining agreements between labor and employer.

"You are instructed, therefore, to draw no inference of guilt or wrongdoing merely because of the execution between defendants of an agreement respecting wages, hours and working conditions."

113. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 63 requested by the employer defendants, as follows:

"You are instructed that employees have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representa- [1221] tives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

114. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 65 requested by the employer defendants, as follows:

> "You are instructed that under the National Labor Relations Act it would be an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees,"

to which refusal defendants excepted, as follows:

> "And we except to the failure to give the instructions proposed * * * Instruction 65, based upon that act."

115. For the reasons stated in the instruction, the Court erred in refusing to give instruction No. 27 requested by the employer defendants, as follows:

> "The testimony of an accomplice is not to be judged by the same standard as the testimony of any other witness, but such evidence is to be acted upon with great caution, and is subject to grave suspicion,"

to which refusal defendants excepted, as follows:

> "We except, your Honor, to the failure to give proposed Instructions 27 to 31, inclusive, on the subject matter of accomplices."

116. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 28 requested by the employer defendants, as follows:

> "I charge you that if any witness, who is an accomplice within the meaning of that term as I have defined it to you, has appeared in this

case and testified on behalf of the Government, then I charge you that you should view the testimony of such witness with distrust [1222] and caution."

The exception taken is quoted in Assignment No. 115, and by this reference is incorporated herein.

117. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 30 requested by the employer defendants, as follows:

"An accomplice is one who is liable to prosecution for the identical offense charged against the defendants on trial in the cause in which the testimony of the accomplice is given. I further charge you that it is for you to determine, as a question of fact in this case, whether or not a particular witness is an accomplice, as I have heretofore defined that term to you. If you do find that a witness who has testified in this cause is an accomplice, then I instruct you that the testimony of such an accomplice ought to be viewed with distrust."

The exception taken is quoted in Assignment No. 115, and by this reference is incorporated herein.

118. The Court erred in denying the motion of these defendants for a new trial.

119. The Court erred in denying the motions of these defendants in arrest of judgment.

120. The Court erred in sustaining plaintiff's demurrer to the Plea in Abatement by Certain Defendants, made and filed by defendants The Bay

Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America Millmen's Union No. 550, and the individual defendants Dave Ryan, Charles Roe, Charles Helbing, W. P. Kelly, W. L. Wilcox, Walter O'Leary, C. H. Irish and Emil H. Ovenberg, in that said plea sufficiently alleged facts [1223] to show that the evidence upon which the indictment was found was obtained in direct violation or contravention of the rights of said defendants under the Fourth and Fifth Amendments to the Constitution of the United States, and that they had been immunized from prosecution under 15 U. S. C. A., Section 32.

121. The Court erred in denying the motion of D. H. Ryan and Bay Counties District Council of Carpenters to quash, vacate and suppress the subpoena issued to them under date of April 11, 1940, which compelled the production of their books, records, papers and documents before the Grand Jury which returned the indictment, and resulted in the use of such books, records, papers and documents in finding the indictment and later in the trial of the case contrary to the Fourth and Fifth Amendments to the Constitution of the United States.

122. The Court erred in denying the motion of Local Union No. 550, United Brotherhood of Car-

penters and Joiners of America to quash, vacate and suppress the subpoena issued to it under date of April 11, 1940, which compelled the production of its books, records, papers and documents before the Grand Jury which returned the indictment, and resulted in the use of such books, records, papers and documents in finding the indictment and later in the trial of the case contrary to the Fourth and Fifth Amendments to the Constitution of the United States.

123. The Court erred in denying the motion of Local Union No. 42, United Brotherhood of Carpenters and Joiners of America to quash, vacate and suppress the subpoena issued to it under date of April 11, 1940, which compelled the production of its books, records, papers and documents before the Grand Jury which returned the indictment, and resulted in the use of such books, records, papers and documents in finding the in- [1224] dictment and later in the trial of the case contrary to the Fourth and Fifth Amendments to the Constitution of the United States.

124. The Court erred in denying the motion of W. C. O'Leary to quash, vacate and suppress the subpoena addressed to Local No. 550, United Brotherhood of Carpenters and Joiners of America under date of April 11, 1940, and served upon him, which compelled the production of the books, papers, records and documents of said local, of which he was a member, before the Grand Jury which returned the indictment, and resulted in the

use of such books, records, papers and documents in finding the indictment and later in the trial of the case contrary to the Fourth and Fifth Amendments to the Constitution of the United States.

125. The Court erred in denying the motion of Charles Helbing to quash, vacate and suppress the subpoena addressed to Local No. 42, United Brotherhood of Carpenters and Joiners of America under the date of April 11, 1940, and served upon him, which compelled the production of the books, papers, records and documents of said local, of which he was a member, before the Grand Jury which returned the indictment, and resulted in the use of such books, records, papers and documents in finding the indictment and later in the trial of the case contrary to the Fourth and Fifth Amendments to the Constitution of the United States.

126. The Court erred in requiring the production under subpoena duces tecum and identification by the recording secretary of the private books, papers and documents of defendant United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, as follows:

"Mr. Howland: Q. I will ask you, Mr. Fromm, whether or not in your official capacity you have custody and access [1225] to any of the records and documents of the United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42?

"A. Yes.

"Mr. Howard: I ask that the answer go out for the purpose of the objection.

"The Court: Yes, it may go out.

"Mr. Howard: I wish to object to this question and object to all further questions of this witness on the ground that he, as identified by the record, is a member of Local No. 42, one of the defendants charged in the indictment and on trial, here, and as such member of an unincorporated association is required in violation of the Fifth Amendment to give testimony against himself.

"The Court: Overruled.

"Mr. Howard: May we have an exception?

"The Court: Yes.

"Mr. Howland: Q. Have you examined these books and records of which you have custody and access for the purpose of collecting therefrom the papers called for by the subpoena duces tecum addressed to Local 42?

"A. Yes.

"Mr. Howard: May it be understood that we have the same objection and exception?

"The Court: Yes, the same objection and an exception. The objection is overruled and an exception noted.

"Mr. Howland: Q. Referring to paragraph No. 1 of that subpoena, Mr. Fromm, do you have with you any of the documents called for therein, and that paragraph reads, constitution, charter, articles of association, and by-laws of the addressee of this subpoena?

"A. I have.

"Q. Will you produce them, please?

"Mr. Howard: If your Honor please, at this time I wish to object to the question and the production through [1226] this witness of any books, papers, or documents of Local No. 42 on the following grounds, first, that such documents or papers are the private books, documents and papers of this defendant unincorporated association, and of each individual defendant member of that association who is a defendant herein. The requirement of the production of those private books, documents and papers is in violation of the Fourth Amendment in that it constitutes an unlawful search and seizure, and it violates the Fifth Amendment to the Constitution in that it requires the association defendant, and each member defendant to give testimony against himself. Now, if your Honor please, I think that this objection raises basic questions that will go to the whole line of testimony.

"The Court: Yes.

"Mr. Howard: We are prepared to argue it, if your Honor wishes.

"The Court: I do not care to hear any argument. The objection is overruled.

"Mr. Howard: May we have the same stipulation as to the entire line of testimony?

"The Court: Yes.

"Mr. Howard: And an exception.

"The Court: Yes.

"Mr. Howland: Q. Are they here?

"A. Yes.

"Q. Have you got them?

"A. Shall I produce them?

"Q. If you have them, produce them."

Thereupon the witness produced and identified the constitution, charter, articles of association and by-laws, minute books, papers, correspondence, records and documents of said defendant.

127. The Court erred in requiring the production [1237] under subpoena duces tecum and identification by the recording secretary of the private books, papers and documents of defendant United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, as follows:

"By Mr. Howland:

"I am Recording Secretary of Millmen's Union Local No. 550 and have held that position for approximately a year and a half. I have custody and access to the records and files of said Local, and I have books and records and other papers of Local 550 which have been subpoenaed.

"Mr. Howland: Q. Do you have any of the books and records and other papers of Local 550 which have been subpoenaed?

"A. I have.

"Mr. Howard: May I have the answer go out until I object?

"The Court: The answer may go out.

"Mr. Howard: I guess that is a superabun-

dance of precaution but it is understood the same objection goes now to this——

"The Court: Yes, yes."

Thereupon the witness produced and identified the constitution, charter, articles of association and by-laws, minute books, papers, correspondence, records and documents of said defendant.

128. The Court erred in requiring the production under subpoena duces tecum and identification of the private books, papers and documents of defendant United Brotherhood of Carpenters and Joiners of America, as follows:

"Thereupon, Mr. Howland called upon the United Brotherhood of Carpenters and Joiners of America to respond to the subpoena. [1228]

"Mr. Tuttle: I will call attention to the fact that this subpoena is directed solely to the United Brotherhood. The papers called for are in the hands or custody of thirty-six persons in Indianapolis. We have made these arrangements, which I hope will be satisfactory to your Honor and counsel, that Mr. Joseph O. Carson, II., who is an attorney in the office of his father, who is general counsel for the United Brotherhood, has gathered those papers together and we make no point that they are authentic papers from the files of the United Brotherhood. We have them here, so that if counsel is willing Mr. Carson can take the witness stand, or I can furnish you with the papers you ask for.

"The Court: Yes.

"Mr. Tuttle: Either course will be agreeable to us.

"The Court: Either course will be agreeable to the Court.

"Mr. Tuttle: If you put Mr. Carson on the stand you will get the papers quicker. Your Honor will appreciate that we have the same objection as we made before?

"The Court: Yes, let that be the understanding.

"Mr. Tuttle: The same ruling and exception."

Thereupon the witness produced and identified the constitution, charter, articles of association and by-laws, minute books, papers, correspondence, records and documents of said defendant.

129. The Court erred in requiring the production under subpoena duces tecum and identification of the private books, papers and documents of defendant Bay Counties District Council of Carpenters, as follows:

"Thereupon the Government called upon Bay Counties District Council of Carpenters to answer to the subpoena [1229] duces tecum with the understanding that the same objection should be reserved."

Thereupon the identification was stipulated as to minutes, correspondence, constitution and by-laws, miscellaneous papers, files and agreements of said defendant.

130. The Court erred in sustaining plaintiff's demurrer to the further and separate Plea In Abatement By Defendant Dave Ryan, in that said plea sufficiently alleged facts to show that by reason of having been compelled to testify concerning the transactions, matters and things upon which the indictment was found, said defendant was entitled to immunity from prosecution under the provisions of Section 32, 15 U.S.C.A.

131. The Court erred in denying on the merits the claim of immunity of defendant Dave Ryan, under 15 U.S.C.A., Section 32, in that the evidence showed that said defendant was compelled to testify and produce evidence concerning the transactions, matters and things upon which the indictment was found.

132. The Court erred as to the defendant Dave Ryan, in making and filing its Findings of Fact and Conclusions of Law on Pleas in Abatement in that the conclusions of law therein are not supported by the findings of fact for the reason that the facts found conclusively show said defendant was compelled to testify concerning the transactions, matters and things upon which the indictment was found and the prosecution was barred under 15 U.S.C.A., Section 32.

133. The Court erred as to the defendant Dave Ryan, in making and filing its Findings of Fact and Conclusions of Law on Pleas in Abatement in that the evidence is insufficient, as a matter of law, to sustain the findings of fact that "VI. Defendant

Ryan in his testimony identified through his signature thereon a certain document as a contract covering wages, hours, and working conditions, signed by the United Brotherhood of [1230] Carpenters and Joiners of America, Locals Nos. 42 and 550, and the Bay Counties District Council of Carpenters by David H. Ryan, Secretary-Treasurer, dated September 21, 1936;" that the evidence establishes without conflict that he was required to and did testify as to his signature on the contract of September 21, 1936, signed by the Bay Counties District Council of Carpenters by D. H. Ryan; that such contract was already in evidence as Government's Exhibit No. 288 and that he was required to and did testify how the contract was negotiated and that he personally participated in the negotiations.

134. The Court erred as to the defendant Dave Ryan, in making and filing its Findings of Fact and Conclusions of Law on Pleas in Abatement in that the evidence is insufficient, as a matter of law, to sustain the finding of fact that "VII. Defendant Ryan identified through his signature thereon a contract dated August 10, 1939 entered into between the Lumber Products Association, Inc., and the United Brotherhood of Carpenters and Joiners of America, Locals Nos. 42 and 550, and the Bay Counties District Council of Carpenters;" that the evidence establishes without conflict that the contract dated August 10, 1939, was Government's Exhibit 297 and he was required to and did

testify as to his signature thereon and that he sat in on the negotiations leading up to the signing of the agreement.

135. The Court erred in sustaining plaintiff's demurrer to the further and separate Plea in Abatement By Defendant W. C. O'Leary, in that said plea sufficiently alleged facts to show that by reason of having been compelled to testify concerning the transactions, matters and things upon which the indictment was found, said defendant was entitled to immunity from prosecution under the provisions of Section 32, 15 U.S.C.A. [1231]

136. The Court erred in denying on the merits the claim of immunity of defendant W. C. O'Leary, under 15 U.S.C.A., Section 32, in that the evidence showed that said defendant was compelled to testify and produce evidence concerning the transactions, matters and things upon which the indictment was found.

137. The Court erred as to the defendant W. C. O'Leary, in making and filing its Findings of Fact and Conclusions of Law on Pleas in Abatement in that the conclusions of law therein are not supported by the findings of fact for the reason that the facts found conclusively show said defendant was compelled to testify concerning the transactions, matters and things upon which the indictment was found and the prosecution was barred under 15 U.S.C.A., Section 32.

138. The Court erred as to the defendant W. C.

O'Leary, in making and filing its Findings of Fact and Conclusions of Law on Pleas in Abatement in that the evidence is insufficient, as a matter of law, to sustain the finding of fact that "XVIII. Defendant O'Leary testified that during the course of the negotiations with the employer organizations during 1939 there was no discussion with regard to the so-called restrictive clause;" in that the evidence shows the witness was interrogated and testified as follows:

"Q. As a matter of fact, you are at present negotiating, are you not, with the mill owners?

"A. We are, yes.

"Q. Those negotiations are being carried on by your Conference Committee, is that correct?

A. Negotiating Committee.

"Q. By your Negotiating Committee. In the course of these negotiations with the employer organizations, has there been any discussion with regard to the restrictive clauses in the contracts?

"A. When you say "restrictive clauses" you mean the re- [1232] striction in the use of certain kinds of mill work, whether it be union, non-union, or——

"Q. More particularly, the restriction with regard to the permission—or with regard to the exclusion of mill work that is patterned outside of the six counties.

"A. No. I don't think there is anything in

it other than the general union condition that we want to prevail.

"Q. Well, I asked you if there has been any discussion. Has it been mentioned?

"A. Well, now, whether it was mentioned at their meetings, or not, I don't know. I don't think so.

"Q. Well, you have been perfectly frank here and stated that the unions did not want it to come in. A. No, we don't.

"Q. And is that still the expression of the union's attitude on it? A. Oh, yes.

"Q. Now, in these negotiations looking toward the signing of a new contract, what has been the employer organization's attitude with regard to those particular clauses? Do they want them in the agreement, or out of the agreement?

"A. They leave that to us. When it is mentioned, 'That is up to you fellows, if you want to continue the wages you have got here, you have got to do it yourself. We aren't doing that.' That is their answer to us on that."

139. The Court erred in sustaining plaintiff's demurrer to the further and separate Plea in Abatement By Defendant Charles Helbing, in that said plea sufficiently alleged facts to show that by reason of having been compelled to testify concerning the transactions, matters and things upon which the indictment was found, said defendant

was entitled to immunity from prosecution under the provisions of Section 32, 15 U.S.C.A. [123]

140. The Court erred in denying on the merits the claim of immunity of defendant Charles Helbing, under 15 U.S.C.A., Section 32, in that the evidence showed that said defendant was compelled to testify and produce evidence concerning the transactions, matters and things upon which the indictment was found.

141. The Court erred as to the defendant Charles Helbing, in making and filing its Findings of Fact and Conclusions of Law on Pleas in Abatement in that the conclusions of law therein are not supported by the findings of fact for the reason that the facts found conclusively show said defendant was compelled to testify concerning the transactions, matters and things upon which the indictment was found and the prosecution was barred under 15 U.S.C.A., Section 32.

142. The Court erred as to the defendant Charles Helbing, in making and filing its Findings of Fact and Conclusions of Law on Pleas in Abatement in that the evidence is insufficient, as a matter of law, to sustain the finding of fact that "XX. * * * Said defendant identified the September, 1939 contract through his signature thereon * * *"; in that the evidence establishes without conflict that he was required to and did testify that it was his signature on Government's Exhibit No. 279 which was an agreement with shops and

mills in this locality and that his signature was affixed as one of the negotiators negotiating the agreement.

Dated: June 13th, 1942.

JOSEPH O. CARSON, II,
HARRY N. ROUTZOHN,
HUGH K. McKEVITT,
JACK M. HOWARD,
Attorneys for said defendants and appellants.

Receipt of a copy of the within Assignment of Errors is hereby admitted this ..... Day of June, 1942.

WALLACE HOWLAND,
Attorneys for plaintiff United States of America.

[Endorsed]: Filed Jun. 13, 1942. [1234]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS BY THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, DEFENDANT AND APPELLANT.

Comes Now the defendant-appellant, The United Brotherhood of Carpenters and Joiners of America, and specifies that in the proceedings before the District Court manifest errors occurred to its prejudice; and it hereby assigns the following errors

which have occurred through rulings, instructions and decisions by the District Court, to each of which this defendant-appellant duly excepted, it having been stipulated between the parties and understood with the Court at the trial as follows: [1235]

"Mr. Howard: May we have an exception?

"The Court: Yes, I am willing to let it be understood that an exception will be noted to every ruling of the Court, so that you won't have to ask me that question every time. Is that agreeable to you?

"Mr. Howard: Yes.

"Mr. Faulkner: Does the Government acquiesce in that statement?

"The Court: I say I am willing that the record should show that an exception has been made to every ruling made in this case on behalf of each and every defendant.

"Mr. Faulkner: That is agreeable to Counsel for the Government?

"Mr. Howland: That is agreeable to the Government.

"The Court: You will understand that there is no necessity of voicing any exception whatever;"

that the exception so taken and reserved is by this reference incorporated in each assignment of error to which it is applicable as though quoted separately therein:

1. The Court erred in overruling the demurrer

of this defendant to the indictment, in that the indictment fails to state facts constituting an offense on the part of this defendant.

2. The Court erred in denying the motion of this defendant, made at the opening of the trial, to dismiss the indictment, in that the indictment fails to state facts constituting an offense on the part of this defendant.

3. The Court erred and exceeded proper discretion in denying the demand and motion of this defendant for a bill of particulars, in that the indictment is so general and uncertain as to the complicity of this defendant and its relation to the subject matter that the particulars demanded [1236] were necessary to enable it properly to prepare and present its defense.

4. The Court erred in denying the motion of this defendant, made at the conclusion of the plaintiff's case, to dismiss the indictment or for a directed verdict of acquittal, because of the insufficiency of the evidence to show the commission by the defendant of the offense charged against it.

5. The Court erred in denying the motion of this defendant, made at the conclusion of the whole case, to dismiss the indictment or for a directed verdict of acquittal, because of the insufficiency of the evidence to show the commission by the defendant of the offense charged against it.

6. The Court erred in holding that there was sufficient evidence against this defendant to warrant submission to the jury of the plaintiff's alleged case against it.

7. The Court erred in excluding the testimony of defendants' witness, Kenneth Davis, concerning the affiliation or connection of certain firms in the Northwest with this defendant, and concerning the matter of their right to use its label; and in sustaining the plaintiff's objection to defendants' offer of proof through such witness. The subject matter of this assignment and the substance of the testimony and proof referred to are fully set forth in Assignment of Error No. 40 made by the defendants-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants. That Assignment of Error is adopted by this defendant and made a part hereof.

8. The Court erred in excluding the testimony of the defendants' witness, Kenneth Davis, concerning the organization of the lumber and sawmills in the States of Washington and Oregon by the A. F. of L. and C. I. O. dur- [1237] ing the years 1933 to 1940, inclusive, and in sustaining the plaintiff's objection to defendants' offer of proof through such witness. The subject matter of this assignment and the substance of the testimony and proof referred to are fully set forth in Assignment of Error No. 41 filed by the defendants-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants. That Assignment of Error is adopted by this defendant and made a part hereof.

9. The Court erred in sustaining plaintiff's objection to and in refusing to admit in evidence, circular letter, defendants' Exhibit 2-M for identification, and in sustaining the plaintiff's objection to and in striking out the testimony of the witness, Joseph F. Cambiano, as a foundation for the admission of such exhibit. The subject matter of this assignment and the substance of the testimony referred to are fully set forth in Assignment of Error No. 42 filed by the defendants-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants. That Assignment of Error is adopted by this defendant and made a part hereof.

10. The Court erred in sustaining plaintiff's objection to, and in refusing to admit in evidence, defendants' Exhibit 2-N for identification. The subject matter of this assignment and the substance of the testimony referred to are fully set forth in Assignment of Error No. 43 filed by the defendants-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other defendants. That Assignment of Error is adopted by this defendant and made a part hereof. [1238]

11. The Court erred in sustaining plaintiff's objection to, and in refusing to admit in evidence, defendants' Exhibit 2-O for identification. The subject matter of this assignment and the substance of the testimony referred to are fully set forth in As-

signment of Error No. 44 filed by the defendants-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants. That Assignment of Error is adopted by this defendant and made a part hereof.

12. The Court erred in sustaining plaintiff's objection to, and in refusing to admit in evidence defendants' Exhibit 2-P for identification. The subject matter of this assignment and the substance of the testimony referred to are fully set forth in Assignment of Error No. 45 filed by the defendants-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants. That Assignment of Error is adopted by this defendant and made a part hereof.

13. The Court erred in sustaining plaintiff's objection to, and in striking out, the testimony of the defendants' witness, Joseph F. Cambiano, as follows:

"Q. Have you ever at any time entered into an agreement with any intention whatsoever of violating the Interstate Commerce Law?

"A. No, I have not.

"Mr. Clark: Just a minute, we move to strike out the answer as intent is immaterial.

"The Court: Let it go out. The objection is sustained."

14. The Court erred in excluding the testimony of the defendants' witness, Joseph F. Cambiano, as follows: [1239]

"Q. There is a dispute on now, is there not, in 1941, over the wage scale?

"Mr. Clark: We object to that as immaterial, and as calling for the conclusion of the witness.

"The Court: The objection is sustained.

"Mr. Routzohn: Q. Is there an arbitration going on at the present time over the wage scale between the employers and the employees?

"Mr. Clark: We object to that as being immaterial to any issue in the case.

"The Court: Sustained."

15. Statements made by plaintiff's counsel during the trial and in the presence of the jury relative to certain defendants who had made pleas of nolo contendere, and referring to such as pleas of guilt, constituted prejudicial misconduct; and the Court erred in overruling the objections of this defendant and of other defendants thereto. The subject matter of this assignment and the substance of the statements referred to are fully set forth in Assignment of Error No. 48 filed by the defendants-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants. That Assignment of Error is adopted by this defendant and made a part hereof.

16. The Court erred in instructing the jury relative to the pleas of nolo contendere by certain defendants and in characterizing such pleas as admis-

sions of guilt. The subject matter of this assignment and the substance of the instructions referred to are fully set forth in Assignment of Error No. 49 filed by the defendant-appellants, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants. That Assignment of Error is adopted by this [1240] defendant and made a part hereof.

17. This defendant joined with the defendants The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and with other labor defendants, in objecting and excepting to certain instructions given by the Court to the jury. Certain instructions so objected and excepted to are set forth seriatim and separately in the Assignments of Error Nos. 50, 54, 55, 56, 76 and 91. This defendant adopts and here repeats as its own each of the said Assignments of Error separately, with the same force and effect as if here set forth and repeated verbatim, consecutively and with separate sequential numbers. This course is taken by this defendant in order to avoid needless repetition and to protect the record on appeal from unnecessary expansion.

18. Certain requested instructions to the jury, identified by sequential numbers were duly submitted to the Court in the course of the trial by this defendant and by other labor defendants; and certain of such instructions the Court refused to give and thereby, as this defendant avers, erred to

the prejudice of this defendant. The requested instructions which the Court so refused to give are set forth seriatim and separately in Assignments of Error Nos. 51, 52, 53, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 92, 93, 94, 95, 96, 97, 98, 99, 108, 109 and 110, both inclusive, by The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America and other labor defendants. This defendant adopts and here repeats as its own each of the said Assignments of Error separately, with the same force and effect as if here set forth and repeated verbatim, consecutively and with separate sequential numbers.

19. The Court erred in instructing the jury as [1241] follows:

"Some testimony has been heard here concerning the union label of the United Brotherhood of Carpenters and Joiners of America. In this connection, I charge you that whether the millwork and patterned lumber involved in the testimony in this case was manufactured in mills whose employees were members of the United Brotherhood of Carpenters and Joiners of America or of its affiliated unions, or whether such millwork and patterned lumber bore a union label is not to be considered by you. The sole question is whether defendants intended to or did restrain the shipment of millwork and patterned lumber in interstate

commerce pursuant to an understanding between the labor union defendants and the non-labor defendants.",

to which this defendant and appellant excepted as follows:

"I also except * * * to that portion of the charge which in substance stated that the protection of the label or the use or non-uses of the label was not to be considered by the jury."

Such instruction was erroneous in that it charged the jury that the enforcement of the union label or any other objective of labor was immaterial and withdrew from the consideration of the jury all questions concerning the motives, intent or objects which prompted the acts of the union defendants, so as to eliminate all questions of fact related to a defense under the Clayton Act, 38 Stat. 730, or the Norris-LaGuardia Act, 47 Stat. 29, and denied as a matter of law application of such sfatutes to the case.

20. The Court erred in refusing to give certain instructions requested by the defendant Alameda County Building and Construction Trades Council, which requests for [1242] instructions inured at the trial to the benefit of all the labor defendants including this defendant, The United Brotherhood of Carpenters and Joiners of America. In the aforesaid Assignments of Error filed by The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America.

and other labor defendants, these requested instructions and the respective numbers by which they were identified at the trial are separately set forth in various Assignments of Error numbered respectively 100 to 107, both inclusive, and error is assigned separately in the case of each such refusal to give the instruction requested. In order to save the record on appeal from undue expansion and repetition, this defendant The United Brotherhood of Carpenters and Joiners of America now hereby adopts separately each and all of the Assignments of Error just mentioned in this paragraph, with the same force and effect as if each of them was here separately set forth and repeated verbatim, consecutively and with separate sequential numbers; and this defendant claims that the Court erred in each case of refusal to give such instructions and that it was prejudiced by each such refusal of the Court.

21. The Court erred in refusing to give certain instructions requested by the group of the defendants represented at the trial by Mr. Harold C. Faulkner, as trial counsel (to-wit, Brass & Kuhn Company, et al.), which requests for instruction inured at the trial to the benefit of all the labor defendants, including this defendant The United Brotherhood of Carpenters and Joiners of America. In the aforesaid Assignments of Error filed by The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, and other labor defendants, these re-

quested instructions and the respective numbers by which [1243] they were identified at the trial are set forth in various Assignments of Error numbered respectively 90, and 111 to 117, both inclusive, and error is assigned separately in the case of each such refusal to give the instruction requested. In order to save the record on appeal from undue expansion and repetition, this defendant The United Brotherhood of Carpenters and Joiners of America now hereby adopts separately each and all of the Assignments of Error just mentioned in this paragraph, with the same force and effect as if each of them were here separately set forth and repeated verbatim consecutively and with separate sequential numbers; and this defendant claims that the Court erred in each case of refusal to give such instructions and that it was prejudiced by each such refusal of the Court.

22. For the reasons stated in the instruction, the Court erred in refusing to give Instruction No. 37 requested by this defendant, as follows:

> "You are instructed that an international trade union, that is, the international body, is not responsible for the acts of a district organization or union affiliated with and chartered by it except as such international body expressly authorizes the act of the local union or association. The International Brotherhood of Carpenters and Joiners of America cannot be found guilty in this case unless you find that it authorized acts to be done, or performed such

acts with the intent of restraining interstate commerce pursuant to a conspiracy with the employer defendants to act as the instrument of the employers to suppress competition."

to which refusal this defendant excepted, as follows:

"Referring to the proposed instructions of the [1244] union defendants, we wish to except to the Court's not giving Instructions * * * 57 * * * relating to the binding effect of representatives acts on the union defendant organizations, and with reference to the knowledge of the union organizations of those acts."

23. The Court erred in instructing the Jury, as follows:

"The indictment charges a misdemeanor, and was returned by the Grand Jury on June 26, 1940. It charges that the defendants entered into a combination to restrain interstate commerce in millwork and patterned lumber, as defined in the indictment. In this connection, you are instructed that this definition includes not only millwork as that word is commonly understood, but also "lumber which has been paneled, cut, or assembled into standard or special patterns and forms . . . and such other wood products prepared for use in the construction of dwellings, buildings, fixtures, and store fronts." The definition in the indictment of millwork and patterned lumber also in-

cludes wood products "used in the construction of prefabricated buildings.",

to which this defendant excepted, as follows:

"I also except to your Honor's definition of millwork and patterned lumber as stated in your charge."

This exception was well taken in that the Court's ruling as to the interpretation of the reference and definition in the indictment as to millwork and patterned lumber was erroneous. See the extended discussion in the course of the trial as to the proper interpretation and meaning of the references and definitions in the indictment on the subject of millwork and patterned lumber. [1245]

24. At the trial the Court erred in certain rulings concerning the admission or exclusion of evidence, to the prejudice of this defendant. These rulings are set forth in the aforesaid Assignments of Error filed by The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America and other labor defendants and numbered therein respectively 7 to 39 inclusive, and error is assigned separately in the case of each such ruling. It was agreed to the trial that all rulings upon the admission or exclusion of evidence should be deemed excepted to by the defendants to whom the ruling was adverse, without utterance of the formal word "exception" in each case and by the several defendants adversely affected thereby; and it was further agreed that an objection taken by any one of the labor defendants

should inure to the benefit of all, including this defendant The United Brotherhood of Carpenters and Joiners of America. In order to save the record on appeal from undue expansion and repetition, this defendant The United Brotherhood of Carpenters and Joiners of America now hereby adopts separately each and all of the Assignments of Error just mentioned in this paragraph, with the same force and effect as if each of them were here separately set forth and repeated verbatim, consecutively and with separate sequential numbers; and this defendant claims that the Court erred in the case of each such ruling and that it was prejudiced by each such ruling.

25. At the trial the Court erred in certain rulings whereby it required the production under subpoena duces tecum and identification of private books, papers and documents of this defendant The United Brotherhood of Carpenters and Joiners of America and of the defendants United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Mill- [1246] men's Union No. 550, and Bay Counties District Council of Carpenters, all of which defendants are unincorporated associations; that such rulings are set forth in the aforesaid Assignments of Error filed by The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America and other labor defendants and numbered therein respectively 126 to 129, inclusive.

and error is assigned separately in the case of each such ruling and this defendant hereby adopts separately each and all of said assignments just mentioned in this paragraph with the same force and effect as if each of them were here separately set forth and repeated verbatim and with separate sequential numbers; and this defendant claims that the Court erred in the case of each such ruling and that it was prejudiced by each such ruling.

26. The Court erred in denying the motion of this defendant for a new trial.

27. The Court erred in denying the motion of this defendant in arrest of judgment.

THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, by
CHARLES H. TUTTLE
JOSEPH O. CARSON
THOMAS E. KERWIN
HUGH K. McKEVITT
Its Counsel.

Receipt of a copy of the within Assignment of Errors is hereby admitted this Day of June, 1942.

WALLACE HOWLAND,
Attorneys for plaintiff United States of America.

[Endorsed]: Filed Jun. 13, 1942. [1247]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS BY DEFENDANT AND APPELLANT ALAMEDA COUNTY BUILDING & CONSTRUCTION TRADES COUNCIL.

Comes Now the defendant and appellant, Alameda County Building and Construction Trades Council and specifies that in the proceedings before the District Court manifest errors occurred to the prejudice of said appellant and said appellant hereby assigns the following errors which said appellant avers occurred through rulings to each of which said appellant duly excepted, it having been stipulated by the parties with the approval of the court as follows:

"Mr. Howard: May we have an exception?

"The Court: Yes, I am willing to let it be understood that an exception will be noted to every ruling of the Court, so that you won't have to ask me that question every time. Is that [1248] agreeable to you?

"Mr. Howard: Yes.

"Mr. Faulkner: Does the Government acquiesce in that statement.

"The Court: I say I am willing that the record should show that an exception has been made to every ruling made in this case on behalf of each and every defendant.

"Mr. Faulkner: That is agreeable to Counsel for the Government?

"Mr. Howland: That is agreeable to the Government.

"The Court: You will understand that there is no necessity of voicing any exception whatever."

This appellant assigns the following errors and hereby incorporates the language of the foregoing stipulation in each and every such assignment to which the said stipulation relates, as fully and specifically as if said stipulation is set out in full in each such assignment of error.

1. The Court erred in overruling the Demurrer of said appellant to the indictment in that the indictment fails to state facts constituting a public offense against said appellant.

2. The Court erred in denying the motions of said appellant to dismiss, based upon the insufficiency of the indictment to state an offense.

3. The Court abused its discretion in denying the motion and demand of said appellant for a Bill of Particulars in that the indictment is so general and uncertain as to the complicity and relations of said defendant that the particulars demanded were necessary to enable said defendant to properly prepare and present its defense.

4. The Court erred because of the insufficiency of the evidence in denying the motions of this appellant made at the conclusion of the plaintiff's case, and repeated at the close of the [1249] case.

to dismiss or for a directed verdict of acquittal, and made upon the grounds:

That there was insufficient evidence to show a violation of the Sherman Act (26 Stat. 209) by this appellant; and

That the evidence affirmatively showed that anything done by this appellant in connection with the matters set forth in the indictment were pursuant to the existence of a labor dispute to which the other labor defendants, or some of them, were parties, and any acts shown in the evidence were immunized by the Clayton Act (38 Stat. 730, Sec. 6-20) and the Norris-LaGuardia Act (47 Stat. 29); and

That plaintiff failed to prove the allegations of Paragraph 29 of the indictment referring to the lack of a labor dispute and that the unions were not carrying on legitimate objectives of labor; and

That as to this appellant there was a lack of any clear proof that it participated in, authorized or ratified any unlawful act; and

That there was no proof of an unlawful intent on the part of this appellant.

5. There is insufficient evidence to sustain the verdict and judgment and the verdict and judgment are each contrary to the evidence in that it affirmatively appears therefrom that all acts and conduct of this appellant was lawful and proper under the Clayton Act (38 Stat. 730, Sec. 6-20) and the Norris-LaGuardia Act (47 Stat. 29).

There is a fatal variance between the charge of the indictment and in particular of Paragraph 17 thereof and the proof in that no proof whatever was received or offered to substantiate this allegation in said Paragraph 17: [1250]

(The Alameda County Building and Construction Trades Council)

"is advisor to, supervisor of, and governing body for unions composed of laborers engaged in building and construction trades in the County of Alameda, California."

7. There is a fatal variance between the charge of the indictment, and in particular Paragraphs 26 to 37, inclusive, thereof, and the proof in this, in that no evidence whatever was received or offered that this appellant, Alameda County Building and Construction Trades Council, was a party, directly or indirectly, to any of the agreements offered in evidence.

8. There is a fatal variance between the charge of the indictment, and in particular Paragraphs 26 to 37, inclusive, thereof, and the proof in this, in that no evidence was received or offered showing any agreement or conspiracy whatever to which this appellant was a party, for any violation of the Sherman Act anywhere referred to in the said indictment.

9. There is a fatal variance between the charge of the indictment and the proof in this, in that all

of the acts and things testified to have been done by this appellant were lawful activities, protected by the Bill of Rights of the Constitution of the United States.

10. There is a fatal variance between the charge of the indictment and the proof in this, in that all the activities of this appellant in evidence in this case, were the lawful, peaceful, normal activities of a labor union, recognized and protected by the courts of the United States under the protective provisions of the Constitution of the United States, as in the case of like peaceful, normal and lawful activities of any other organization or group of citizens.

11. There is a fatal variance between the charge of the indictment and the proof in this, in that any activities of this appellant tending to persuade or to subject to moral coercion, were and are lawful and in the exercise of the constitutional right of [1251] free speech, protected by the First and Fourteenth Amendments to the Constitution of the United States.

12. The Court erred in refusing to give Instruction No. 1 proposed by this appellant, as follows:

> "You are instructed that the evidence in this case is insufficient to warrant a conviction of the defendant Alameda County Building and Construction Trades Council upon the charge contained in Count One in the indictment herein, and the Court therefore instructs you to render a verdict of not guilty as to the said defendant Alameda County Building and Con-

struction Trades Council upon the charge contained in said count one in said indictment.

Given

Refused Exception allowed

Given as modified, exception allowed"

13. The Court erred in refusing to give Instruction No. 2 proposed by this appellant, as follows:

"I instruct you that the publication, unaccompanied by violence, of a notice that the employer is unfair to organized labor and requesting the public not to patronize him is an exercise of the right of free speech guaranteed by the First Amendment which cannot be made unlawful by act of Congress.

Given

Refused Exception allowed

Given as modified, exception allowed

Authorities:

U. S. v. Hutcheson, 60 S.Ct. 463, 85 L.Ed. 422

Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 659"

14. The Court erred in refusing to give Instruction No. 3 proposed by this appellant, as follows:

"I instruct you that under the Constitution of the United States and under the Constitution of the State of California, all citizens are guaranteed the right of free speech. I further instruct you that if you find that the defendants or some of them participated in picketing certain places of business, and that such picketing was carried on by peaceful means,

then I instruct you that such picketing was an exercise of the right of free speech by those defendants who participated in the picketing.

Given

Refused Exception allowed

Given as modified, exception allowed

Authorities:

In re Lyons, 27 Cal. App. (2d) 293, 295, 299.

Thornhill v. Alabama, 60 S. Ct. 736, 310 U.S. 88, 84 L. Ed. 659 [1252]

People v. Carlson, 60 S.Ct. 746, 310 U.S. 106, 84 L. Ed. 668

Lisse v. Local Union, 2 Cal. (2d) 312

McKay & Allied Cases, 16 Cal. (2d) 311, et seq."

15. The Court erred in refusing to give Instruction No. 4 proposed by this appellant, as follows:

"I instruct you that under the law in California, picketing carried on for the purpose of seeing who can be the subject of persuasive inducement is legal. Therefore, I instruct you that if you find that the picketing in this case was conducted for the purpose of peaceful persuasion, then I instruct you that such picketing is legal.

Given

Refused Exception allowed

Given as modified, exception allowed

Authorities:

Lisse v. Local Union, 2 Cal. (2d) 312.

McKay & Allied Cases, 16 Cal. (2d) 311, et seq."

16. The Court erred in refusing to give Instruction No. 5 proposed by this appellant, as follows:

"Under the laws of the State of California, picketing may lawfully be carried on by any group of citizens, and so long as peaceful means are used in connection with the picketing, such picketing is a mere exercise of the right of free speech which is guaranteed to every citizen by the Constitution of the United States and by the Constitution of the State of California.

Given

Refused Exception allowed

Given as modified, exception allowed

Authorities:

In re Lyons, 27 Cal. App. (2d) 293, 295, 299

People v. Carlson, 60 S.Ct. 746, 310 U.S. 106, 84 L. Ed. 668

Thornhill v. Alabama, 60 S.Ct. 736, 310 U.S. 88, 84 L. Ed. 659

Lisse v. Local Union, 2 Cal. (2d) 312

McKay & Allied Cases, 16 Cal. (2d) 311, et seq."

17. The Court erred in refusing to give Instruction No. 6 proposed by this appellant, as follows:

"I Instruct you that under the laws of California, picketing is lawful if carried on by peaceable and persuasive means. If you find that the picketing in this case was carried on for the purpose of actually interfering with the peaceable entrance to a place of business,

or peaceable exit therefrom, then such picketing was unlawful, but if you find that such picketing was carried on for the purpose of influencing or persuading members of the public by peaceful [1253] means, then I instruct you that such picketing was lawful.

Given

Refused Exception allowed

Given as modified, exception allowed

Authorities:

Lisse v. Local Union, 2 Cal. (2d) 312, 321

McKay & Allied Cases, 16 Cal. (2d) 311, et seq."

18. The Court erred in refusing to give Instruction No. 7 proposed by this appellant, as follows:

"I instruct you that these defendants had a legal right, under the laws of the State of California, to withdraw social and business intercourse with any person or persons, and that they also had the right by all legitimate means, that is to say, by fair publication and fair oral or written persuasion to induce others interested in or sympathetic with their cause to withdraw their social intercourse and business patronage from any such person or persons."

Given

Refused. Exception allowed

Given as modified, exception allowed

Authorities:

Pierce v. Stablemen's Union, 156 Cal. 70

Parkinson v. Building Trades Council, 154 Cal. 581

Senn v. Tile Layers Union, 57 S. Ct. 857, 201 U. S. 468, 81 L. Ed. 1229

19. The Court erred in refusing to give Instruction No. 8 proposed by this appellant, as follows:

"You have heard the witnesses and the attorneys in this case refer to a boycott carried on by the defendants or some of them against certain places of business. The Supreme Court of California has defined a boycott as being an organized effort to persuade or coerce, which may be legal or illegal according to the means employed. In other words, and as applied to the facts in this case, the defendants had a legal right to conduct an organized boycott of certain places of business, and in pursuance of the boycott, to endeavor to persuade the public not to patronize the places of business under boycott, provided no illegal means were used in the carrying out of the boycott. Therefore, I instruct you that if you find that the defendants did carry on an organized boycott of such places of business, but that in doing so, they neither committed nor threatened any act of violence, then I instruct you that the boycott was legal.

Given

Refused Exception allowed

Given as modified, exception allowed [1254]

Authorities:

Lisse v. Local Union, 2 Cal. (2d) 312, 321

Pierce v. Stablemen's Union, 156 Cal. 70, 75, 76

McKay & Allied Cases, 16 Cal. (2d) 311, et seq."

20. The Court erred in refusing to give Instruction No. 9 proposed by this appellant, as follows:

"I instruct you that if you find that the acts committed by the defendants, as shown by the evidence, were in themselves legal, and not wrong, I advise you that those acts are not rendered illegal merely by reason of any bad motive or bad or malicious intent with which such acts were done.

Given

Refused Exception allowed

Given as modified, exception allowed

Authorities:

Parkinson v. Building Trades Council, 154 Cal. 581, 593-597."

21. The Court erred in refusing to give Instruction No. 10 proposed by this appellant, as follows:

"The proof required to show ratification by defendant Alameda County Building & Construction Trades Council after actual knowledge of unlawful acts of its individual officers, members or agents, is proof of formal action taken by vote or resolution of the members comprising said Alameda County Building & Construction Trades Council.

Given

Refused Exception allowed

Given as modified, exception allowed

Authorities:

Federal Anti-Injunction Act (Norris-La-Guardia Act) 29 U. S. Code, Section 106"

22. The Court erred in refusing to give Instruction No. 11 proposed by this appellant, as follows:

"The proof required to show actual participation by defendant Alameda County Building & Construction Trades Council in unlawful acts of its individual officers, members or agents is proof of formal action taken by vote or resolution of the members comprising said Alameda County Building & Construction Trades Council.

Authorities:

Federal Anti-Injunction Act (Norris-La-Guardia Act) 29 U. S. Code, Section 106"

23. The Court erred in refusing to give Instruction No. 12 proposed by this appellant, as follows: [1255]

"The proof required to show actual authorization by defendant Alameda Building & Construction Trades Council of unlawful acts of its individual officers, members or agents is proof of formal action taken by vote or resolution of the members comprising said Alameda Building & Construction Trades Council.

Authorities:

Federal Anti-Injunction Act (Norris-La-Guardia Act) 29 U. S. Code, Section 106."

24. The Court erred in refusing to give Instruction No. 13 proposed by this appellant, as follows:

> "Defendant Alameda County Building & Construction Trades Council shall not be held responsible or liable for the unlawful acts of individual officers, members or agents, except upon clear proof of actual proof of actual participation in or actual authorization of such acts or of ratifications of such acts after actual knowledge thereof.
>
> Authorities:
>
> Federal Anti-Injunction Act (Norris-La-Guardia Act) 29 U. S. Code, Section 106."

25. The Court erred in requiring the production of the private books, papers, records and documents of this appellant, Alameda County Building & Construction Trades Council, by means of subpoena duces tecum directed to this appellant, which is a voluntary unincorporated association, to wit, a labor union, and the Court further erred in receiving such private books, papers, records and documents in evidence over the objection urged by this appellant that they were such private books, papers, records and documents of appellant association, and of each individual member of appellant association, defendants herein; that the requirement of such production and admission in evidence of such private books, papers, records and documents violated the Fourth Amendment to the Con-

stitution of the United States in that it constituted an unlawful search and seizure and also violated the Fifth Amendment to the Constitution of the United States in that it required said appellant association, and each individual member thereof, each and all being defendants therein, to give testimony against itself and himself; that such books, papers, records and documents consisted of the Constitution, By-Laws, reports, Minute Books and general correspondence. [1256]

26. The Court erred in each of the matters set out in the following numbered assignments of error filed herein by defendants and appellants, The Bay Counties District Council of Carpenters and others: This appellant, Alameda County Building & Construction Trades Council, hereby adopts and incorporates herein the said numbered assignments of the said appellants, The Bay Counties District Council of Carpenters and others, together with all grounds therein stated, as fully as if the same were repeated and copied fully herein. The following are the numbered assignments referred to: 8, 9; 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 36, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49; 50, 51, 52, 53, 54, 55, 56, 57 (including all of the exceptions to the refusal to give the instructions numbered in said assignment No. 57), 73, 74, 75, 76, 77, 110, 115, 116 and 117.

27. The Court erred in denying the motion of this defendant and appellant for a new trial.

28. The Court erred in denying the motion of this defendant and appellant in arrest of judgment.

Dated: this 12th day of June, 1942.

CLARENCE E. TODD
Attorney for Appellant Alameda County Building and Construction Trades Council

Receipt of Copy of Within Assignment of Errors Is Hereby Admitted This 13th Day of June, 1942.

WALLACE HOWLAND
Special Asst. to the Atty. Gen.

[Endorsed]: Filed Jun. 13, 1942. [1257]

[Title of District Court and Cause.]

ORDER STAYING EXECUTION OF JUDGMENT AND SENTENCES OF CERTAIN DEFENDANTS PENDING APPEAL UPON PAYMENT OF AMOUNT OF FINES TO CLERK IN ESCROW.

Upon application of the attorneys for the following named defendants, and good cause appearing therefor,

It Is Hereby Ordered that execution of the judgment of conviction and sentences against the defendants The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Join-

ers of America, Millmen's Union No. 550, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Join-
[1258] ers of America, The United Brotherhood of Carpenters and Joiners of America, J. F. Cambiano, Charles Helbing, C. H. Irish, W. F. Kelly, Walter O'Leary, Emil Ovenberg, Dave Ryan, Charles Roe and W. L. Wilcox, and each of them, be and the same is hereby stayed pending appeal and until the final determination of the appeals taken by said defendants and until the judgment and sentences have become final; such stay being granted on the terms and condition that there is required to be deposited with the Clerk of the Court in escrow for and in behalf of each of said appealing defendants the amount of the fine such defendant is sentenced to pay, such deposit in escrow to be made under and subject to the provisions of Rule V. of the Rules of Procedure in Criminal Cases, and the stay of execution to be immediately effective upon the making of such deposit.

Dated: December 30th, 1941.

A. F. ST. SURE

Judge of the U. S. District Court.

[Endorsed]: Filed Dec. 30, 1941. [1259]

[Title of District Court and Cause.]

ORDER GIVING DIRECTIONS FOR PREPARATION OF RECORD ON APPEAL AND FIXING TIME FOR SETTLEMENT AND FILING OF BILL OF EXCEPTIONS AND FILING OF ASSIGNMENT OF ERRORS.

The attorneys for the appellants and for the United States of America, having appeared before the undersigned Judge of the above entitled court on Saturday, January 3, 1942 at the hour of 10:00 a.m., in accordance with rule VII of the Rules [1260] of Procedure in Criminal Cases, and good cause appearing therefor, the following orders and directions are made and given with respect to the preparation of the record on appeal of the defendants and appellants who stood trial in the case, namely, The United Brotherhood of Carpenters and Joiners of America, The Alameda County Building and Construction Trades Council, The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, J. F. Cambiano, Charles Helbing, C. H. Irish, W. P. Kelly, Walter O'Leary, Emil H. Ovenberg, Dave Ryan, W. L. Wilcox, Charles Roe, J. G. Ennies, John Mullen, Joseph L. Emanuel, Mullen Manufacturing Co., L. & E. Emanuel, Inc., Braas & Kuhn Co., Fink &

Schindler Co., Commercial Fixture & Store Front Institute and Mangrum, Holbrook & Elkus:

1. It Is Ordered that the time within which said appellants hereinbefore named shall procure to be settled and filed with the clerk of the above entitled court a bill of exceptions setting forth the proceedings upon which said appellants wish to rely is hereby fixed and extended to and including May 25, 1942, and within the same time, to wit, on or before May 25, 1942, said appellants shall file with the clerk of the above entitled court an assignment of the errors of which they complain.

2. It Is Further Ordered that the proceedings upon which said appellants wish to rely shall be set forth in a single bill of exceptions.

3. It Is Further Ordered that the term of court for all purposes of the case and the appeals herein is extended to and including June 15, 1942.

4. It Is Further Ordered that the court expressly reserves jurisdiction to further extend such term of court and re- [1261] tains all other jurisdiction existing under the law to make such further orders and give such additional instructions as may become appropriate in relation to the prosecution of the appeal and preparation of the record on appeal.

Dated: January 3, 1942.

(Signed) A. F. ST. SURE
Judge of the United States District Court.

Approved as to form and consent is hereby given to extension of term of court.

TOM C. CLARK
WALLACE HOWLAND
Attorneys for United States of America.

HUGH K. McKEVITT
CLARENCE E. TODD
Attorneys for union defendants.

CHARLES ALBERT DAVIS
MELBERT B. ADAMS
HAROLD C. FAULKNER
Attorneys for employer defendants.

[Endorsed]: Filed Jan. 8, 1942. [1962]

District Court of the United States
Northern District of California
Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Saturday the 10th day of January, in the year of our Lord one thousand nine hundred and forty-two.

Present: The Honorable A. F. St. Sure, District Judge.

[Title of Cause.]

No. 26977.

This case came on regularly this day for the fixing of cost and supersedeas bonds, etc. Wallace Howland, Esq., Special Assistant to the Attorney General, was present for and on behalf of the United States. J. M. Thomas, Esq., and Moses Lasky, Esq., appeared as Attorneys for the following defendants, who had heretofore entered pleas of "Nolo Contendere", and who are now appealing herein. Ordered that these defendants give a cost bond for costs on appeal in the sum of $250.00. Further ordered that the following named defendants give a supersedeas bond on appeal in the sum of $2,000.00 each, to-wit:

Lumber Products Association, Inc., Acme Manufacturing Co., Inc., Eureka Sash, Door & Moulding Mills, Boorman [1263] Lumber Company, Hogan Lumber Company, Loop Lumber & Mill Company, Smith Lumber Company, Tilden Lumber Company, E. K. Wood Lumber Company, Zenith Mill & Lumber Co., Eureka Mill & Lumber Co., Wood Products, Inc.

Ordered that the following named defendants give a supersedeas bond on appeal in the sum of $1,000.00 each, to-wit:

Carl Warden, Harry W. Gaetjen, Charles Monson, Fred Spencer, W. P. Holmes, Charles Gustafson, Christian A. Wilder, J. A. Hart, D. N. Edwards, Nels E. Nelson, Robert W. Shannon, Andrew Nelson. [1264]

[Title of District Court and Cause.]

ORDER STAYING EXECUTION OF JUDGMENT AND SENTENCE OF CERTAIN DEFENDANT PENDING APPEAL UPON PAYMENT OF THE AMOUNT OF THE FINE TO CLERK IN ESCROW.

Upon application of the attorney for the following named defendant, and good cause appearing therefor, it is hereby

Ordered: That execution of the judgment of conviction and sentence against the defendant Alameda County Building and Construction Trades Council be and the same is hereby stayed pending appeal and upon the final termination of appeal taken by said defendant and until the judgment and sentence have become final, such stay being granted on the terms and condition that there is required to be deposited with the clerk of the court in escrow for and in behalf of said appealing defendant the amount of the fine such defendant is sentenced to pay; such deposit in escrow to be made under and [1265] pursuant to the provisions of Rule 5 of the Rules of Proceedings in Criminal Cases, and the stay of execution to be immediately effective upon the making of such deposit.

Dated: Jan. 12, 1942.

A. F. ST. SURE
Judge of said Court

Approved as to form,

FRED S. GILBERT, JR.
Special Attorney

[Endorsed]: Filed Jan. 12, 1942. [1266]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON PLEAS IN ABATEMENT

The defendants Dave Ryan, Walter O'Leary and Charles Helbing before the trial on the merits each filed a plea in abatement on the ground that the evidence upon which the indictment was found by the Grand Jury was obtained in violation of the constitutional right of the defendant not to be compelled to be a witness against himself in a criminal action; and, further, that by reason of being compelled to testify concerning the transactions, matters, and things upon which the indictment was found, they were entitled to immunity from prosecution on the charges contained in the indictment. 15 USCA, Section 32.

The Government filed a demurrer to the pleas in abatement. The demurrer was sustained on the

grounds (1) that the first point is not tenable in view of the immunity [1267] statute (15 USCA §32); and (2) that the pleas failed to show by averments of fact that, were it not for the immunity statute, the defendants could have invoked their constitutional right against self-incrimination.

The plea in abatement of defendant Dave Ryan sets forth the particularities upon which the plea is based, as follows:

> "That he was interrogated and testified before said grand jury concerning the organization of the United Brotherhood of Carpenters and Joiners of America and all local unions chartered under said Brotherhood, how such organizations were established, set up and functioned; that he was further interrogated and testified concerning the identity of the officers of the Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America; that he was further interrogated and testified concerning his signature appended to the agreement of September, 1936, and described in the indictment herein; that he was further interrogated and testified concerning the existence of communications relating to the matters and things specified in said subpoena duces tecum."

The particularities relied upon by defendant Walter O'Leary are:

> "That he was interrogated and testified be-

fore said grand jury concerning the sending back to Los Angeles of certain ironing boards shipped from Los Angeles to the San Francisco Bay area and relative to the reasons for the return of said ironing boards; that this defendant was further interrogated and gave testimony concerning activities in the San Francisco Bay area in keeping out millwork manufactured under a lesser wage scale than that existing in the San Francisco Bay area; that this defendant was further interrogated and testified concerning the refusal to use or install products not bearing the union label and he was further interrogated and testified concerning his present attitude as to the propriety of keeping out of the San Francisco Bay area products without the union label or manufactured under a lesser wage scale than that prevailing in the San Francisco Bay area."

The basis of defendant Charles Helbing's plea in abatement is set forth as: [1268]

"That he was interrogated and testified before said grand jury relative to certain statements attributed to him in the minutes of a meeting during the year 1938, of said United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, and was questioned and testified concerning the meaning of such statements and the use of the word 'pledge' in connection with the agreement or

agreements between such union and the defendant manufacturers in the above entitled proceeding and referred to in said indictment;

"That this defendant was further interrogated and gave testimony concerning the taking of certain so-called 'booster cards' to Jones Brothers, which cards fostered the use of local millwork as opposed to millwork manufactured outside of the San Francisco Bay area;

"That this defendant was further interrogated and testified concerning his acts and conduct in connection with blocking the use of material in the San Francisco Bay area that did not carry a union label, and he was further required to give evidence concerning the union organization of millwork manufacturers in the states of Washington and Oregon."

At the conclusion of the Government's case at the trial, the said defendants orally moved for a reconsideration of the original pleas. At this time the defendants conceded that they were not entitled to a disclosure of the testimony of said defendants given before the Grand Jury (U. S. v. Goldman, 28 F. (2d) 424, 431; Mulloney v. U. S. (C. C. A. 1) 79 F. (2d) 566, 574; U. S. v. American Medical Association, 26 F. Supp. 429, 430), but requested that the Court read such testimony. Defendants cited the case of Edwards v. U. S., 312 U. S. 473, but the Court, having in mind the confidential character of proceedings before a Grand

Jury and the requirement of secrecy which guards its proceedings (Goodman v. U. S., 108 F. (2d) 516, 519), reserved its ruling on the motions. After the defendants were found guilty by verdict of the jury, the said defendants again moved orally for a reconsideration of their pleas.

Pursuant to said oral motions, the Court read [1269] the transcript of the testimony of the said defendants given before the Grand Jury. The pleas in abatement were thereupon considered by the Court on their merits in the light of the testimony given by the moving defendants before the Grand Jury. The question for the Court's determination was whether such testimony, in view of all the circumstances of the case, was of such a nature as to bring the moving defendants within the purview of the immunity statute. Miller v. U. S. (C. C. A. 9) 95 F. (2d) 492; U. S. v. Herron, 28 F. (2d) 122.

The indictment alleges that certain employer groups and individuals and certain labor organizations and individuals unlawfully combined and conspired to restrain interstate trade and commerce in millwork and patterned lumber, in violation of Section 1 of the Sherman Antitrust Act. A number of contracts were offered in evidence, both by the Government and by the defendants. Those dated 1936 and 1938 had a clause providing in effect that no millwork or patterned lumber would be purchased and no work would be done on millwork and patterned lumber which was made at a wage

scale lower than that prevailing under the contract. The contracts had a clause providing that nothing in the contracts should be interpreted as violating the Sherman Antitrust Law or any other Federal statute. The defendants adduced testimony to the effect that the contracts were not intended to and did not effect any restraint of interstate commerce. The Government, on the other hand, introduced evidence of overt acts by and admissions of the alleged conspirators which established an unlawful restraint [1270] to the satisfaction of the jury.

Upon consideration of the Grand Jury transcript of the testimony of the defendants Dave Ryan, Walter O'Leary and Charles Helbing, the Court makes the following Findings of Fact:

AS TO DEFENDANT DAVID H. RYAN:

I.

Defendant Ryan appeared before the Grand Jury in response to a subpoena duces tecum served upon him calling for the production of certain documents and records of the Bay Counties District Council of Carpenters, an unincorporated voluntary association.

II.

Defendant Ryan asserted his constitutional right against being compelled in a criminal action to be a witness against himself, and elected to stand on said constitutional right unless the Government granted him immunity from prosecution for or on

account of any transaction, matter, or thing concerning which he should testify or produce evidence; and said defendant further asserted that the documents and records of the Bay Counties District Council of Carpenters called for by the subpoena duces tecum were not subject to subpoena under the constitutional guaranty against unreasonable search and seizure.

III.

The Grand Jury presented said defendant Ryan to this Court as contumacious; and said defendant thereupon, [1271] through his counsel, moved that the subpoena duces tecum theretofore served on him be quashed, vacated, and suppressed; and upon hearing had, this Court denied said motions and ordered said defendant Ryan to produce the records and documents of the Bay Counties District Council of Carpenters as called for in subpoena duces tecum.

IV.

Defendant Ryan appeared before the Grand Jury and produced certain records and documents of the Bay Counties District Council of Carpenters, pursuant to subpoena duces tecum and the order of the Court.

V.

Defendant Ryan again asserted his constitutional right against being compelled in a criminal action to be a witness against himself and further asserted the constitutional right of the Bay Counties Dis-

trict Council of Carpenters against unreasonable search and seizure; and the Government refused to grant said defendant immunity by virtue of any testimony he should give or with regard to the records and documents he should produce pursuant to subpoena duces tecum.

VI.

Defendant Ryan in his testimony identified through his signature thereon a certain document as a contract covering wages, hours, and working conditions, signed by the United Brotherhood of Carpenters and Joiners of America, Locals Nos. 42 and 550, and the Bay Counties District Council of Carpenters by David H. Ryan, Secretary-Treasurer, dated September 24, 1936; said defendant further [1272] testified that he was Secretary-Treasurer of the Bay Counties District Council of Carpenters; that it is customary for the Bay Counties District Council of Carpenters to approve all contracts of affiliated unions and for that reason the Bay Counties District Council of Carpenters appears as a signatory thereto; that the contract was submitted to the general office of the United Brotherhood of Carpenters and Joiners of America. Said defendant read paragraph 16 of said contract aloud and volunteered the statement that it was quite familiar to him.

VII.

Defendant Ryan identified through his signature thereon a contract dated August 10, 1939 entered

into between the Lumber Products Association, Inc., and the United Brotherhood of Carpenters and Joiners of America, Locals Nos. 42 and 550, and the Bay Counties District Council of Carpenters. He further testified that said contract was the result of arbitration; that it was never approved by the general office of the United Brotherhood of Carpenters and Joiners of America; that President Hutcheson of said United Brotherhood came to San Francisco in connection with this said contract.

VIII.

Defendant Ryan was read paragraphs 17 and 18 of an agreement of wages, hours, and working conditions, dated December 19, 1938, which had been produced before the Grand Jury by another witness, between the cabinet manufacturers, the planing mill owners, and the affiliated unions of the United Brotherhood of Carpenters and Joiners of America, which said paragraphs read: [1273].

"XVII. In the interest of providing employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or Employers of members of the United Brotherhood of Carpenters and Joiners of America signators hereto. The purchase, working and sales of the following products is excepted"—then follows a list.

"XVIII. The purchase and sale of the following products is excepted"—then follows a list.

"Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an interstate common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws;"

Defendant Ryan testified that the above paragraphs were written at the suggestion of General President Hutcheson.

IX.

Defendant Ryan testified that the signature of "J. F. Cambiano—Witness" appeared on the 1939 contract for the reason that the employers refused to negotiate unless a representative of the general office of the United Brotherhood of Carpenters and Joiners of America was present.

AS TO DEFENDANT WALTER C. O'LEARY.

X.

Defendant Walter C. O'Leary appeared before the Grand Jury in response to a subpoena duces tecum served upon him calling for the production of certain documents and records of the United Brotherhood of Carpenters and Joiners of America,

Local No. 550, an unincorporated voluntary association. [1274]

XI.

Defendant O'Leary asserted his constitutional right against being compelled in a criminal action to be a witness against himself and elected to stand on said constitutional right unless granted immunity from prosecution for or on account of any transaction, matter, or thing concerning which he should testify or produce evidence; and the Government refused to grant said defendant O'Leary such immunity. Said defendant O'Leary refused to answer certain questions then asked of him before the Grand Jury.

XII.

Defendant O'Leary, through his counsel, moved that the subpoena duces tecum theretofore served on him be quashed, vacated, and suppressed; and upon hearing had, this Court denied said motions and ordered said defendant O'Leary to appear before the Grand Jury and to produce the documents named in the subpoena.

XIII.

Defendant O'Leary appeared before the Grand Jury and produced certain records and documents of the United Brotherhood of Carpenters and Joiners of America, Local No. 550, pursuant to subpoena duces tecum and order of the Court.

XIV.

Said defendant O'Leary testified that he was

business representative of the United Brotherhood of Carpenters and Joiners of America, Local 550. [1275]

XV.

Defendant O'Leary identified the minute book of the United Brotherhood of Carpenters and Joiners of America, Local 550, which had been produced by said defendant; said defendant further testified from a notation in said minute book that a Mr. Edwards who sought permission to address a union meeting was connected with Wood Products, Inc.; that there was no discussion in the Union at that time or with Mr. Edwards regarding the so-called restrictive clause in the contract; said defendant further testified as follows concerning the membership and functions of certain committees referred to in said minutes; Conference Committee is composed of a representative of each local union and formulates the general policy of the unions with reference to demands as to hours and wages; the Negotiating Committee is composed of members representing the unions and the employers and negotiates agreements with reference to wages and hours; the Observers Committee was appointed from Local 550 for the purpose of checking up on material being delivered during period of strike in 1938; the State Mill Committee is an unofficial body composed of as many delegates as can be induced to attend for the purpose of promoting uniform conditions over the State. Defendant O'Leary

further testified, that the Label League was used to promote the use of the union label; that the Building Trades meeting referred to a meeting of the Building Trades Council which was composed of representatives from all the building trades local unions; and that the so-called stabilization agreement was an effort over a two-year period to stabilize wages, hours, and working conditions in the six counties involved; that General President Hutcheson appeared during [1276] a Conference Committee meeting, shook hands, "had a little blah-blah there, and that is about all that amounted to"; that the Unions desired a uniform agreement in the counties of Marin, San Francisco, Santa Clara, Alameda, San Mateo, and Contra Costa.

XVI.

Defendant O'Leary testified concerning a reference in the minutes to a local hardware store handling non-union ironing boards manufactured and shipped from Los Angeles to San Francisco, stating that a local manufacturer wished some special concession to meet the competition for Los Angeles, which was not granted.

XVII.

Defendant O'Leary testified that the term "hot millwork" referred to millwork which did not bear a union label; that General President Hutcheson of the United Brotherhood of Carpenters and Joiners of America informed the local union that millwork bearing the union label had to be installed

even if manufactured at a lower wage scale than that paid in San Francisco, regardless of the fact that the local union objected; that said label was so honored and no pickets were placed on such labelled material.

XVIII.

Defendant O'Leary testified that during the course of the negotiations with the employer organizations during 1939 there was no discussion with regard to the so-called restrictive clause. [1277]

AS TO DEFENDANT CHARLES HELBING

XIX.

Defendant Charles Helbing appeared before the Grand Jury in response to a subpoena duces tecum served upon him calling for the production of certain documents and records of the United Brotherhood of Carpenters and Joiners of America, Local No. 42, an unincorporated voluntary association.

XX.

Defendant Helbing testified that he was business representative of the United Brotherhood of Carpenters and Joiners of America, Local 42. Said defendant identified the September, 1939 contract through his signature thereon, and testified that it was an agreement covering wages and hours with the shops and mills; said defendant identified the signatories to the said agreement, and testified that it is customary for wage contracts to come before the local, then the District Council of Carpenters,

and then the General Office; he further testified that J. F. Cambiano is a representative of the General Office of the United Brotherhood of Carpenters and Joiners of America. Said defendant Helbing identified the journal of Local No. 42 and testified concerning an entry therein on a matter of a refund from the State Mill Committee. Said defendant Helbing then asserted a constitutional right against being compelled in a criminal action to be a witness against himself, unless granted immunity from prosecution for or on account of any transaction, matter, or thing concerning which he should testify or produce evidence; and the Government refused to grant said defendant Helbing such [1278] immunity; and said defendant Helbing refused to testify any further.

XXI.

Defendant Helbing, through his counsel, moved that the subpoena duces tecum theretofore served on said defendant be quashed, vacated, and suppressed, and upon hearing had, this Court denied said motions and ordered said defendant Helbing to appear before the Grand Jury and to produce the documents named in the subpoena.

XXII.

Defendant Helbing appeared before the Grand Jury and testified that the minutes of the Building Trades Council were sent to Local No. 42 for its concurrence; that by unfair material was "meant only non-union material"; that Local No. 42 from

time to time recommended to the Building Trades Council that firms not employing union men and working under union conditions be placed on the unfair list, and that when the men join the union the employer be removed from the unfair list. Defendant Helbing, in response to a question concerning the Jones Hardwood Company, testified that he had told Mr. Jones "when you have doors coming in here, why, we will take it up"; and further testified that during the negotiations in 1937, he was not in San Francisco and took no part in any negotiations; and that he was not a member of the Conference or Negotiating Committees in 1938.

XXIII.

Defendant Charles Helbing testified that the State Mill Committee had for its purpose the promotion of interests of the union organization. Said defendant further testified that the unions set a scale to try to meet [1279] the competition from the north; that no pickets were used to enforce the union label demand or desire of the unions; that no material that had a union label upon it was kept out of the local area in 1939.

XXIV.

Defendant Helbing, upon being shown a notation in said minutes referring to a "pledge to mill owners to enforce stamp," testified that the word "pledge" was not "put down correctly" as he merely stated that action should be taken to secure

the support of the carpenters to look for stamped material; in this connection said defendant further testified, "We don't make no pledge; our agreement shows no pledge of any kind. * * * It means that we wanted stamped material used in this locality; that is what it means."

The Supreme Court in Heike v. U.S., 227 U.S. 131, established the general principles governing the application of the immunity statute. "But the obvious purpose of the statute is to make evidence available and compulsory that otherwise could not be got. We see no reason for supposing that the act offered a gratuity to crime." Ibid. p. 142. * * * "When the statute speaks of testimony concerning a matter, it means concerning it in a substantial way, just as the constitutional protection is confined to real danger and does not extend to remote possibilities out of the ordinary course of law." Ibid. p. 144.

In considering the analogous problem of what testimony is under the protection of the Fifth Amendment to the Constitution, Mr. Justice Taft said in Ex Parte [1280] Irvine, 74 Fed. 954, 960: "* * * The true rule is that it is for the judge before whom the question arises to decide whether an answer to the question put may reasonably have a tendency to criminate the witness, or to furnish proof of a link in the chain of evidence necessary to convict him of a crime. It is impossible to conceive of a question which might not elicit a fact useful as a link in proving some supposable crime

against a witness. The mere statement of his name or of his place of residence might identify him as a felon, but it is not enough that the answer to the question may furnish evidence out of the witness' mouth of a fact which, upon some imaginary hypothesis, would be the one link wanting in the chain of proof against him of a crime. It must appear to the court, from the character of the question, and the other facts adduced in the case, that there is some tangible and substantial probability that the answer of the witness may help to convict him of a crime. * * *" See also Mason v. United States, 244 U.S. 362.

From the Findings of Fact, therefore, it must be determined whether the testimony of each defendant had a direct tendency to incriminate or, on the other hand, whether such testimony had no more than a remote or speculative possibility of incrimination. Heike v. U.S., supra; Mason v. U.S., supra; O'Connell v. U.S. (C.C.A. 2) 40 F. (2d) 201, 204.

The defendant Ryan produced papers of the Bay Counties District Council, an unincorporated labor association, and identified the same. The defendant O'Leary likewise produced documents of an unincorporated labor association, the United Brotherhood of Carpenters and Joiners [1281] of America, Local No. 550. O'Leary also identified the records produced. Similarly, defendant Helbing produced and identified documents of Local No. 42 of the United Brotherhood of Carpenters and Joiners of

America. The production of the papers of an unincorporated association is not violative of the constitutional prohibition against unreasonable search and seizure. In re Local Union No. 550, United Brotherhood of Carpenters and Joiners of America, 33 F. Supp. 544, and cases therein cited. Testimony identifying the documents and auxiliary to the production of them is as unprivileged as are the documents themselves. United States v. Austin-Bagley Corp. (C.C.A. 2) 31 F. (2d) 229; United States v. Illinois Alcohol Co., (C.C.A. 2) 45 F. (2d) 145, 149, cert. den. 282 U.S. 901; United States v. Greater N. Y. Live Poultry Chamber of Commerce, 34 F. (2d) 967, cert. den. 283 U.S. 837.

Each of the said defendants testified that he was an officer of his respective labor union. It cannot be said that the respective organizations to which the defendants belong were unlawful or that the holding of offices in such organizations was in any way contrary to law. United States v. Greater N. Y. Live Poultry Chamber of Commerce, supra.

The said defendants testified as to the general set-up of the affiliated union organizations and the procedure for the approval of contracts concerning wages, hours and working conditions. Officers of the organizations and signatories to the wage contracts were identified by the defendants in their testimony. It is, of course, clear that the moving defendants herein cannot successfully urge that their testimony incriminated a third person, assuming that such testimony would incriminate, which fact does not appear in this case. [1282]

The remaining testimony of the said defendants before the Grand Jury related to legitimate activities of a labor union. All of this testimony concerned that which is sanctioned by law, and was, therefore, in no way incriminating. United States v. Hutcheson, 312 U. S. 219.

An analogous situation to the one presented by the pleas in abatement is found in the cases arising from similar pleas filed by various defendants in the antitrust prosecution by the United States against the Greater New York Live Poultry Chamber of Commerce. In United States v. Greater New York L. P. Chamber of Commerce, 33 F. (2d) 1005, a plea in abatement was filed by a defendant "on the ground that he had previously, in obedience to a subpoena duces tecum, testified before the Grand Jury under oath regarding his place of residence, business affairs of the slaughter-house for live poultry which he was operating, and his connection and identification with defendant Greater New York Live Poultry Chamber of Commerce, and respecting the books, records, and papers relating to his business and respecting the business of said corporate defendant." The demurrer to the plea was sustained.

A plea in abatement was filed by another defendant in the same prosecution. A trial before a jury was had. The defendant testified that he had appeared before the Grand Jury and was asked and answered questions concerning his connection with the local union, his methods of keeping books, the

significance of certain figures and check marks in the book which he had produced, the conduct of the [1283] union meetings, and the minutes of the association. The Government's motion for a directed verdict at the conclusion of the trial was granted. The Court held that there was not a scintilla of evidence tending to show that the defendant was guilty of the crime charged in the indictment or of any other crime. United States v. Greater New York L. P. Chamber of Commerce, 34 F. (2d) 967.

It follows, therefore, as a conclusion of law that the testimony of the defendants Dave Ryan, Walter O'Leary and Charles Helbing given by them before the Grand Jury did not tend to and did not incriminate them, and did not tend to prove them guilty of the crime of which they were convicted by verdict of the jury. The pleas in abatement should be and they are denied on the merits.

Dated: January 14, 1942.

A. F. ST. SURE
United States District Judge.

[Endorsed]: Filed Jan. 14, 1942. [1284]

United States Circuit Court of Appeals
For the Ninth Circuit

At a Stated Term, to wit: The October Term 1941, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room

thereof, in the City and County of San Francisco, in the State of California, on Monday the eighteenth day of May, in the year of our Lord one thousand nine hundred and forty-two.

Present: Honorable Francis A. Garrecht,
Circuit Judge, Presiding,
Honorable William Denman,
Circuit Judge,
Honorable William Healy,
Circuit Judge.

D. C. 23977

No. 10,011

LUMBER PRODUCTS ASSOCIATION, INC., et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER EXTENDING TIME FOR FILING ASSIGNMENTS OF ERROR, AND FOR SETTLEMENT OF BILL OF EXCEPTIONS.

Upon consideration of the application of the appellants, The United Brotherhood of Carpenters and Joiners of America, et al., and counsel for appellee stipulating thereto,

It Is Ordered that the time within which appellants may lodge their bill of exceptions and file their assignments of error be, and hereby is en-

larged and extended until ten days from and after the disposition by this Court of the motion heretofore made and submitted by appellants Dave Ryan, et al., for directions to the trial court relating to the preparation of the record on appeal, etc.; that appellee shall have ten days after such lodging of the bill of exceptions and filing of the assignments of error to propose any amendments thereto, and that the bill of exceptions may be settled and filed within ten days thereafter.

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 18th day of May, 1942.

(Seal) PAUL P. O'BRIEN

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed May 18, 1942. [1285]

At a Stated Term, to wit: The October Term 1941, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Thursday the fourth day of June, in the year of our Lord one thousand nine hundred and forty-two.

Present: Honorable Francis A. Garrecht,
Circuit Judge, Presiding,
Honorable William Denman,
Circuit Judge,
Honorable William Healy,
Circuit Judge.

No. 2697-S

No. 10,011

DAVE RYAN, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER GRANTING MOTION FOR DIRECTIONS TO TRIAL COURT RELATING TO PREPARATION OF RECORD.

Upon consideration of the motion of appellants, filed March 24, 1942, for directions to the trial court relating to the preparation of the record on appeal and for an order vacating or modifying an order of the trial court in relation to the preparation of such record and of the points and authorities in opposition thereto filed by appellee on March 30, 1942, and by direction of the Court,

It Is Ordered that said motion be, and hereby is granted.

(Reverse Side of Document)

CLERK'S CERTIFICATE

I Hereby Certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San [1286] Francisco, in the State of California, this 9th day of June, 1942.

PAUL P. O'BRIEN

Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed Jun. 8, 1942. [1287]

[Title of Court and Cause.]:

PRAECIPE ON BEHALF OF LUMBER PRODUCTS ASSOCIATION, INC., A CORPORATION ACME MANUFACTURING CO., INC., A CORPORATION, EUREKA SASH, DOOR & MOULDING MILLS, A CORPORATION, CARL WARDEN, HARRY W. GAETJEN, CHARLES MONSON, FRED SPENCER, W. P. HOLMES, J. A. HART, CHARLES GUSTAFSON AND CHRISTIAN A. WILDER.

To the Clerk of the above entitled court:

Please prepare transcript on appeal in this cause and include therein the following:

1. The indictment, excluding therefrom Count Two, that count having been dismissed.

2. Minutes of July 15, 1940, pertaining to the arraignment.

3. Demurrer filed on October 1, 1940 entitled "Demurrer of the Defendants Lumber Products Association, Inc., and Other Defendants to the In-

dictment", excluding therefrom paragraphs VII, VIII, XI, XII, XV and XVI (said paragraphs relating to Count Two of the indictment, which has been dismissed).

4. Demurrer filed on November 27, 1940 entitled "Demurrer of Anna K. Warden, Albert B. Veyhle, Jesse L. Sage, Christian A. Wilder, Charles Gustafson and Carl Warden to the Indictment", excluding therefrom paragraphs IV, V, VIII, IX, XII and XIII (said paragraphs relating to Count Two of the Indictment, which has been dismissed).

5. Minutes of November 1, 1941, showing pleas of nolo contendere entered by Lumber Products Association, Inc., a corporation, Acme Manufacturing Co., Inc., a corporation, Eureka Sash, Door & Moulding Mills, a corporation, Carl Warden, Harry W Gaetjen, Charles Monson, Fred Spencer, W. P. Holmes, J. A. Hart, Charles Gustafson and Christian A. Wilder to Count One of the Indictment.

6. Minutes of December 20, 1941 showing dismissal of Count Two of the indictment as against the parties named in paragraph 5 above. [1288]

7. Minutes of December 20, 1941 showing the sentences imposed on the parties named in paragraph 5 above.

7a. Judgments as to parties named in paragraph 5 above.

8. Notice of appeal filed on December 24, 1941 by the parties named in paragraph 5 above.

9. Minutes of January 10, 1942 fixing cost bond

on appeal of the parties named in paragraph 5 above.

10. Statement of docket entries.

11. Assignment of errors filed herein by the parties named in paragraph 5 above.

12. Bill of exceptions on behalf of Christian A. Wilder and Charles Gustafson.

13. This praecipe.

Dated: February 20, 1942.

JAMES M. THOMAS
MAURICE E. HARRISON
MOSES LASKY
BROBECK, PHLEGER & HARRISON
Attorneys for Appellants Named Above.

(Admission of Service)

[Endorsed]: Filed Feb. 20, 1942. [1289]

[Title of Court and Cause.]

PRAECIPE ON BEHALF OF D. N. EDWARDS, NELS E. NELSON, ROBERT W. SHANNON, AND ANDREW NELSON, APPELLANTS.

To the Clerk of the above entitled Court:

Please prepare transcript on appeal in this cause and include therein the following:

1. The indictment, excluding therefrom Count Two, that count having been dismissed.

2. Minutes of arraignment of the above named appellants.

3. Minutes of November 1, 1941, showing pleas of nolo contendere entered by the above named appellants to Count One of the indictment.

4. Minutes of December 22, 1941, showing dismissal of Count Two of the indictment against the parties named hereinabove as appellants.

5. Minutes of December 22, 1941, showing the sentences imposed on the parties named hereinabove as appellants.

6. Judgments as to the parties named hereinabove as appellants.

7. Notice of Appeal filed on December 26, 1941 by the parties named hereinabove as appellants.

8. Minutes of January 10, 1942, fixing cost bond on appeal.

9. Assignment of errors filed herein by the parties named hereinabove as appellants.

10. This praecipe.

Dated: February 23, 1942.

MORGAN J. DOYLE
Attorney for Appellants
abovenamed.

(Admission of Service)

[Endorsed]: Filed Feb. 23, 1942. [1290]

[Title of Court and Cause.]

PRAECIPE ON BEHALF OF BOORMAN LUMBER COMPANY, HOGAN LUMBER COMPANY, LOOP LUMBER & MILL COMPANY, SMITH LUMBER COMPANY, A CORPORATION, TILDEN LUMBER COMPANY, A CORPORATION, E. K. WOOD LUMBER COMPANY, A CORPORATION, ZENITH MILL & LUMBER COMPANY, A CORPORATION, EUREKA MILL & LUMBER CO., A CORPORATION, AND WOOD PRODUCTS, INC., A CORPORATION, APPELLANTS.

To the Clerk of the above entitled Court:

Please prepare transcript on appeal in this cause and include therein the following:

1. The indictment, excluding therefrom Count Two, that count having been dismissed.

2. Minutes of arraignment of the above named appellants.

3. Minutes of Nov. 1 & 6, 1941 showing pleas of nolo contendere entered by the above named appellants to Count One of the Indictment.

4. Minutes of November 10, 1941, showing dismissal of Count Two of the indictment against the parties named hereinabove as appellants.

5. Minutes of December 20, 1941, showing the sentences imposed on the parties named hereinabove as appellants.

6. Judgments as to the parties named hereinabove as appellants.

7. Notice of appeal filed on December 26, 1941 by the parties named hereinabove as appellants.

8. Minutes of January 10, 1942, fixing cost bond on appeal.

9. Assignment of errors filed herein by the parties named hereinabove as appellants.

10. This praecipe.

Dated: February 23, 1942.

MORGAN J. DOYLE
Attorney for Appellants above named.

(Admission of Service)

[Endorsed]: Filed Feb. 23, 1942. [1291]

[Title of District Court and Cause.]

PRAECIPE IN BEHALF OF UNION DEFENDANTS

To the Clerk of the Above Entitled Court:

The defendants The United Brotherhood of Carpenters and Joiners of America; The Alameda County Building and Construction Trades Council; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550; The Bay Counties District Council of Carpenters of the

The United Brotherhood of Carpenters and Joiners of America; J. F. Cambiano, Charles Helbing, C. H. Irish, W. P. Kelly, Walter O'Leary, Emil Ovenberg, Charles Roe, Dave Ryan and W. L. Wilcox, [1292] hereby request that you please prepare, certify and transmit to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit a transcript of the record on appeal in this cause and include therein the following:

Docket Entry Number

1. Indictment filed June 26, 1940.

152. Demurrer of defendants The United Brotherhood of Carpenters and Joiners of America, et al., filed October 1, 1940.

164. Plea in Abatement of defendant Dave Ryan, filed October 1, 1940.

165. Plea in Abatement of defendant Charles Helbing, filed October 1, 1940.

166. Plea in Abatement of defendant Walter O'Leary, filed October 1, 1940.

168. Plea in Abatement of The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, et al., filed October 1, 1940.

Order placing various Pleas in Abatement on secret file made October 1, 1940.

Docket Entry Number

174. United States Demurrer to Plea in Abatement of defendant Walter O'Leary, filed October 14, 1940.

175. United States Demurrer to Plea in Abatement entitled "Pleas in Abatement by Certain Defendants", filed October 14, 1940. [1293]

176. United States Demurrer to Plea in Abatement of defendant Charles Helbing, filed October 14, 1940.

177. United States Demurrer to Plea in Abatement of defendant Dave Ryan, filed October 14, 1940.

231. Order Sustaining United States Demurrers to Pleas in Abatement and Denying Pleas in Abatement, denying demands and motions for Bill of Particulars and overruling demurrers, filed November 22, 1940.

Plea of Not Guilty of defendant J. F. Cambiano, made November 30, 1940.

Pleas of Not Guilty of Alameda County Building and Construction Trades Council; The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America; The United Brotherhood of Carpenters and Joiners of America; The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42; The United Brotherhood of

Docket Entry Number

Carpenters and Joiners of America, Millmen's Union No. 550; Charles Helbing, C. H. Irish, W. P. Kelly, Walter O'Leary, Emil H. Ovenberg, Charles Roe, Dave Ryan and W. L. Wilcox, made December 2, 1940.

530. Jury's Verdict as to these defendants, filed December 12, 1941.

Order Denying Motions for New Trial and Motions in Arrest of Judgment of these defendants, made December 20, 1941. [1294]

Judgments as to these defendants, made and filed on or about December 20, 1941.

546. Notice of Appeal of defendant The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, et al., filed December 26, 1941.

548. Notice of Appeal of the defendant The United Brotherhood of Carpenters and Joiners of America, filed December 26, 1941.

550. Notice of Appeal of the defendant Alameda County Building and Construction Trades Council, filed December 26, 1941.

553. Order Staying Execution of Judgment and Sentences upon payment of amount of fines to Clerk in escrow, filed December 30, 1941.

557. Order giving directions for preparation of record on appeal and fixing time to settle and

Docket Entry Number

file Bill of Exceptions and file Assignment of Errors, filed January 8, 1942.

559. Order Staying Execution of Judgment and Sentence of Alameda County Building and Construction Trades Council pending appeal, filed January 12, 1942.

560. Findings of Fact and Conclusions of Law on Pleas in Abatement, filed January 14, 1942.

577. Certified copy of Order of United States Circuit Court of Appeals for the Ninth Circuit extending time [1295] for filing Assignments of Errors and settlement of Bill of Exceptions.

579. Certified Copy of Order of United States Circuit Court of Appeals for the Ninth Circuit granting motion for directions to trial court relating to the preparation of the record on appeal, etc.

Bill of Exceptions of the Union Appellants.

581. Assignment of Errors of the defendants The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America, et al.

582. Assignment of Errors of defendant United Brotherhood of Carpenters and Joiners of America.

583. Assignment of Errors of defendant Alameda

County Building and Construction Trades Council.

This Praecipe.

JOSEPH O. CARSON,
JOSEPH O. CARSON, II,
HARRY N. ROUTZOHN,
CHARLES H. TUTTLE,
THOMAS E. KERWIN,
CLARENCE E. TODD,
HUGH K. McKEVITT,
JACK M. HOWARD,
Attorneys for Union Defendants and Appellants.

Receipt of a copy of the within Praecipe is hereby admitted this 23rd Day of June, 1942.

WALLACE HOWLAND,

.....

Attorneys for United States of America.

[Endorsed]: Filed Jun. 24, 942. [1296]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT OF RECORD ON APPEAL

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing pages, numbered from 1 to 1296, inclusive, contain

a full, true and correct transcript of the records and proceedings in the case entitled United States of America, vs. Lumber Products Association Inc., et al. No. 26977-S, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of Forty-two 15/100 ($42.15) Dollars, and that the said amount has been paid to me by the Attorneys for the appellants herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 30th day of July A. D. 1942.

[Seal] WALTER B. MALING,
Clerk.
HARRY L. FOUTS,
Deputy Clerk. [1297]

[Endorsed]: No. 10011. United States Circuit Court of Appeals for the Ninth Circuit. Lumber Products Association, Inc., a corporation, et al., Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed July 30, 1942.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10,011

LUMBER PRODUCTS ASSOCIATION, INC., et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

STIPULATION AND ORDER RELATIVE TO EXHIBITS AND THE RECORD ON APPEAL.

Whereas, by stipulation and order made and entered in the cause in the District Court, and contained in the Bill of Exceptions, it is provided that the original exhibits admitted in evidence in the case or marked for identification and offered in evidence and rejected should be forwarded by the Clerk of said District Court to the above entitled court to accompany the transcript of record on appeal; and

Whereas, pursuant to such stipulation and order said original exhibits have been transmitted to and received by the Clerk of the above entitled court, together with the said transcript of record on appeal; and

Whereas, by said stipulation and order it is provided that so much of said exhibits as shall not by reason of their nature or length be set forth in the

Bill of Exceptions shall by reference be incorporated in and made a part of said Bill of Exceptions, and that the Findings of Fact and Conclusions of Law on Pleas and Abatement, filed January 14, 1942, be transmitted as a part of the Clerk's record under Rule VIII. of the Rules and Procedure in criminal cases and by reference incorporated in and made a part of the Bill of Exceptions;

Now Therefore, It Is Hereby Stipulated by and between the Appellee and the Union Appellants, acting through their undersigned attorneys, that the above entitled Court make and enter an order approving said stipulation and order made and entered in the District Court, and that said original exhibits be made a part of the record on appeal, provided that such of said exhibits, or pertinent portions thereof, as are necessary for the consideration of any point intended to be relied upon the appeal, and which are printable, shall be set forth at the appropriate place in the printed transcript where offered or introduced in evidence, and the party desiring the same shall so designate such exhibits for printing.

Dated this 30th day of July, 1942.

THURMAN ARNOLD,
FRANK J. HENNESSY,
WALLACE HOWLAND,
PIERCE W. BRADLEY,
Attorneys for United States of America, Appellee.

JOSEPH O. CARSON,
CHARLES H. TUTTLE,
THOMAS E. KERWIN,
CLARENCE E. TODD,
JOSEPH O. CARSON, II.,
HARRY N. ROUTZOHN,
HUGH K. McKEVITT,
JACK M. HOWARD,
Attorneys for Union Appellants.

It Is So Ordered.

Dated July 30, 1942.

FRANCIS A. GARRECHT,
Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Filed Jul. 30, 1942.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION BY UNION APPELLANTS OF POINTS ON APPEAL AND RECORD FOR PRINTING.

To the Clerk of the Above Entitled Court and to the Attorneys for Appellee:

Please Take Notice that the Union appellants, represented by the undersigned attorneys, adopt as their points on appeal their respective Assignments of Error appearing in the transcript of the record;

and designate the entire transcript for printing, and in addition the following:

1. Stipulation and Order of the above entitled Court relative to exhibits and the transcript on appeal.

2. This Designation of points on appeal and record for printing.

3. Plaintiff's Exhibit 115-30 for identification to be inserted following line 20, page 555 of the Bill of Exceptions ending with the sentence "The objection is sustained."

4. Defendants' Exhibit V for identification to be inserted following line 11, page 556 of the Bill of Exceptions ending with the portion of word "tification".

5. Defendants' Exhibit W for identification to be inserted following line 21, page 556 of the Bill of Exceptions ending with the word "Identification".

6. Defendants' Exhibit X for identification to be inserted following line 29, page 556 of the Bill of Exceptions ending with the portion of word "tification".

7. Defendants' Exhibit 2-M for identification to be inserted following line 13, page 681 of the Bill of Exceptions ending with the words "for identification".

8. Defendants' Exhibit 2-N for identification to be inserted following line 5, page 683 of the Bill of Exceptions ending with the sentence "Objection sustained".

9. Defendants' Exhibit 2-O for identification to be inserted following line 27, page 683 of the Bill of Exceptions ending with the sentence "Objection sustained".

10. Defendant's Exhibit 2-P for identification to be inserted following line 1, page 685 of the Bill of Exceptions ending with the sentence "Yes, your Honor".

Dated: July 30th, 1942.

JOSEPH O. CARSON,
CHARLES H. TUTTLE,
THOMAS E. KERWIN,
CLARENCE E. TODD,
JOSEPH O. CARSON, II.,
HARRY N. ROUTZOHN,
HUGH K. McKEVITT,
JACK M. HOWARD,
Attorneys for Union Appellants.

Receipt of copy admitted this 30th day of July, 1942.

THURMAN ARNOLD,
FRANK J. HENNESSY,
WALLACE HOWLAND,
PIERCE W. BRADLEY,
Attorneys for U. S. of America, Appellee.

[Endorsed]: Filed Jul. 30, 1942.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION BY APPELLANTS, LUMBER PRODUCTS ASSOCIATION, INC. AND OTHERS, OF POINTS ON APPEAL.

To the Clerk of the Above-Entitled Court, and to the Attorneys for Appellee:

Please Take Notice that the appellants, Lumber Products Association, Inc., a corporation, Acme Manufacturing Co., Inc., a corporation, Eureka Sash, Door and Moulding Mills, a corporation, Carl Warden, Harry W. Gaetjen, Charles Monson, Fred Spencer, W. P. Holmes, J. A. Hart, Charles Gustafson, Christian A. Wilder, represented by the undersigned attorneys, adopt as their points on appeal their respective assignments of error appearing in the transcript of record.

Dated: August 8, 1942.

JAMES M. THOMAS,
MAURICE E. HARRISON,
MOSES LASKY,
BROBECK, PHLEGER & HARRISON,
Attorneys for Appellants Above Named.

[Endorsed]: Filed Aug. 10, 1942.